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**EXHIBIT**  
**A**

December 13, 2015

Law Offices of Gregory L. Lattimer  
1200 G Street, N.W. Suite 800  
Washington, D.C. 20005

RE: *Tracey White, et al v. Thomas Jackson, et al*  
*In the United States District Court*  
*Eastern District of Missouri*  
*Eastern District*  
*Case No.: 14-cv-01490 (HEA)*

Dear Mr. Lattimer:

I have been retained by the Law Offices of Gregory L. Lattimer in my capacity as a police practices and procedures expert in the referenced case.<sup>1</sup> I was tasked to analyze the police conduct in the referenced case in order to offer opinions and conclusions as to the arrests of the plaintiff's as well as the police practices and procedures present in the case. Among other issues, I was asked to formulate an opinion as to whether officers acted in accordance with widely accepted police practices, whether probable cause to arrest was articulated and documented and was force applied in an objectively reasonable manner.

In pursuing my analysis, I reviewed the following documents and materials relating to the referenced case:

1. Complaint

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<sup>1</sup> My curriculum vita is attached, including my qualifications, a list of publications within the previous 10 years, and a list of testimony over the past four years. My rate of compensation is \$300.00 per hour.

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2. Third Amended complaint
3. Deposition of Tracey White
4. Deposition of William Davis
5. Deposition of Theophilus Green
6. Deposition of Damon Coleman
7. Deposition of Dwayne Matthews
8. Deposition of Antawn Harris
9. Deposition of Kerry White
10. Deposition of Kia Deytona Bowes
11. Deposition of Sandy Devonta Bowers
12. Deposition of Nathan Burns
13. Deposition of Jon Belmar
14. Deposition of Antonio Valentine
15. Deposition of Keith Eyer
16. Deposition of David Ryan
17. Deposition of David Devouton
18. Deposition of Michael McCann
19. Deposition of Terrence McCoy
20. Deposition of Aaron Vinson
21. Deposition of Joseph Patterson
22. Deposition of Brandon McKinnon
23. Deposition of Derek Jackson
24. Deposition of Matthew Delia
25. Deposition of William Bates, Jr.
26. Deposition of Justin Cosmo
27. Deposition of Richard Mundy
28. Deposition of Edwin Metzenwerth
29. Deposition of Antonio Dominic French
30. St. Louis County Justice Center Inmate Short Profile Booking form -  
Tracey A. White

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31. St. Louis County Justice Center Inmate Short Profile Booking forms – William Davis
32. St. Louis County Justice Center Inmate Short Profile Booking forms - Damon Ladonte Coleman
33. St. Louis County Justice Center Inmate Short Profile Booking forms - Kai Deyonta Bowers
34. St. Louis County Justice Center Inmate Short Profile Booking forms - Sandy Devonta Bowers
35. St. Louis County Justice Center Inmate Short Profile Booking forms - Theophilus Green
36. St. Louis County Justice Center Inmate Short Profile Booking forms for: Kerry Rashaun White
37. St. Louis County Justice Center Inmate Short Profile Booking forms for: Nathan Burns
38. Saint Louis County Police Department Investigative Report 15-18619 (Antawn Harris)
39. Saint Louis County Police Department Investigative Report 14-44579 (Kia Bowers, Sandy Bowers, Monzell S. Jones, Derek J. Bower)
40. Saint Louis County Police Department Investigative Report 14-44389 (Nathan Burns)
41. Saint Louis County Police Department Investigative Report 14-44717 (Tracey White, William Davis)
42. Saint Louis County Police Department Investigative Report 15-9973 (Dwayne Matthews)
43. Saint Louis County Police Department Investigative Report 14-44393, (Theophilus Green and Damon Coleman)
44. Saint Louis County Police Arrest Record Information on Tracey White
45. Defendant's Exhibit G-2 (photo)
46. Defendant's Exhibit G-1 (photo)
47. Saint Louis County Arrest Report form F-287 (blank)



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48. USDC Memorandum, Order and Preliminary Injunction, 10/6/14, by U.S. District judge Catherine D. Perry USDC Order, 12/22/14 by U.S. District judge Catherine D. Perry
49. Initial Disclosures of Defendant's Jon Belmar and Saint Louis County
50. Plaintiff Nathan Burn's Answers to Defendants Jackson, Cosma, and the City of Ferguson Interrogatories to Plaintiff
51. Plaintiff Nathan Burn's Response to Defendants Jackson, Cosma, and the City of Ferguson Request for Production
52. Plaintiff Antawn Harris Response to Defendants Jackson, Cosma, and the City of Ferguson Request for Production
53. Plaintiff Antawn Harris's Answers to Defendants Jackson, Cosma, and the City of Ferguson Interrogatories to Plaintiff
54. Plaintiff Dwayne Matthews' Answers to Defendants Jackson, Cosma, and the City of Ferguson Interrogatories to Plaintiff
55. Plaintiff Dwayne Matthews' Response to Defendants Jackson, Cosma, and the City of Ferguson Request for Production
56. Objections and Responses of Defendant St. Louis County to Plaintiff's First Request for Production of Documents
57. Objections and Responses to Plaintiff's First Request for Production Documents to Defendant Officer Michael McCann
58. Objections and Responses to Plaintiff's First Request for Production Documents to Defendant Officer Terrence McCoy
59. Defendant David Ryan's Objections and Answers to Plaintiff's First Set of Interrogatories to Sergeant David Ryan
60. Defendant St. Louis County's Objections and Answers to Plaintiff's First Set of Interrogatories to St. Louis County
61. Objections and Responses to Plaintiff's First Request for Production Documents to Defendant Sergeant David Ryan
62. Objections and Responses to Plaintiff's First Request for Production Documents to Defendant Officer William Bates

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63. Objections and Responses to Plaintiff's First Request for Production Documents to Defendant Officer Daniel Hill
64. Objections and Responses to Plaintiff's First Request for Production Documents to Defendant Officer Joe Patterson
65. Objections and Responses to Plaintiff's First Request for Production Documents to Defendant Officer Nicholas Payne
66. Objections and Responses to Plaintiff's First Request for Production Documents to Defendant Officer Aaron Vinson
67. Objections and Responses to Plaintiff's First Request for Production Documents to Defendant Officer Antonio Valentine
68. Defendant Joe Patterson's Objections and Answers to Plaintiff's First Set of Interrogatories to Officer Joe Patterson
69. Defendant Aaron Vinson's Objections and Answers to Plaintiff's First Set of Interrogatories to Officer Aaron Vinson
70. Defendant Daniel Hill's Objections and Answers to Plaintiff's First Set of Interrogatories to Officer Daniel Hill
71. Defendant William Bates' Objections and Answers to Plaintiff's First Set of Interrogatories to Officer William Bates
72. Defendant Antonio Valentine's Objections and Answers to Plaintiff's First Set of Interrogatories to Officer Antonio Valentine
73. U.S. Department of Justice Civil Rights Division, Investigation of the Ferguson Police Department, March 4, 2015
74. U.S. Department of Justice After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri
75. U.S. Department of Homeland Security, Center for Domestic Preparedness Field Force Operations and Field Force Command and Planning manuals

In the presentation of my opinions and conclusions, I may rely upon and utilize any of the case materials, including the materials identified above. I reached my



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opinions and conclusions by applying my knowledge, specialized experience, training, education and skills to the facts and information furnished to me. My opinions are provided with a reasonable degree of professional certainty within the field of law enforcement.

### **Background**

An assessment of individual police practices should be evaluated in as complete context as possible. In this case, as background, it noteworthy that the Ferguson Police Department (FPD) has a long and documented history of systemic unconstitutional policing in general and in particular, a pattern of stops without reasonable suspicion and arrests without probable cause in violation of the Fourth Amendment; infringement on free expression, as well as retaliation for protected expression, in violation of the First Amendment; and excessive force in violation of the Fourth Amendment. This fact was recently confirmed in detail by the United States Department of Justice (USDOJ) Civil Right Division in their investigation of the Ferguson Police Department. This documented history is germane because it is widely accepted and understood that incidents of unconstitutional policing occur in police departments in proportion to their organizational attitudes, values and beliefs (i.e., the police culture within a particular department). A department with a problematic use of unconstitutional practices and/or having chronic problems in this regard is more likely to produce incidents of misconduct and error. Here, the federal government, through the U.S. Department of Justice, made findings, including the following, which should be considered in an objective and impartial review of this case:

1. On March 4, 2015, the USDOJ found that the FDP's approach to law enforcement has led officers to conduct stops and arrests that violate the Constitution. Frequently, officers stop people without reasonable suspicion and/or arrest them without probable cause. (DOJ Report at 2)

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2. The USDOJ found that FPD engages in a pattern of First Amendment violations in that FPD's approach to law enforcement results in violations of individuals' First Amendments rights. FPD arrests people for a variety of protected conduct: people are punished for talking back to officers, recording public police activities, and lawfully protesting perceived injustices. (DOJ Report at 24)
3. In particular to recording police activities, the USDOJ found that the FPD office routinely infringe on the public's First Amendment rights by preventing people from recording their activities. The First Amendment "prohibit(s) the government from limiting the stock of information from which members of the public may draw". *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 783 (1978). (DOJ Report at 26)
4. The USDOJ found that the FPD engages in a pattern of excessive force in violation of the Fourth Amendment. The finding that the FPD use of force is routinely unreasonable and sometimes clearly punitive is drawn largely from FPD's documentation; that is, from the officers own words. (DOJ Report at 29)
5. Also, the USDOJ found that the FPD's use of force review system is particularly ineffectual. Force frequently is not reported. When it is, there is rarely any meaningful review. Supervisors do little to no investigation; either do not understand or chose not to follow the FPD's use-of-force policy in analyzing officer conduct; rarely correct officer misconduct when they find it; and do not see the patterns of abuse that are evident when reviewing these incidents in the aggregate. (DOJ Report at 38)

Further, the Department of Justice (DOJ) determined that there was a need to assess the police response in Ferguson to determine if actions could be taken to improve situations like this in the future. As part of several DOJ initiatives and at the request of the St. Louis County Police Chief, the Office of Community



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Oriented Policing Services (COPS Office) agreed to conduct an after-action assessment of the police response to the mass demonstrations in Ferguson.

The four core agencies involved in this assessment are the St. Louis County Police Department, the St. Louis Metropolitan Police Department, the Missouri State Highway Patrol, and the Ferguson Police Department. These departments were selected for the assessment because they were the primary responders to the demonstrations. The After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri was published in 2015.

Here again, the federal government, through the U.S. Department of Justice, COPS Office, identified themes which permeated all aspects of the police response to the mass demonstrations in Ferguson, including the following themes, which should be considered in an objective and impartial review of this case:

1. Inconsistent leadership - Inconsistencies in direction, incident management and tactical orders were apparent and particularly evident in the comments of frontline officers and supervisors. (COPS Office Report at 2)
2. Failure to understand the endemic problems in the community - There was insufficient concerns, and relationships between law enforcement and some community segments were lacking.
3. A reactive rather than proactive strategy - The police response to the demonstrations was generally reactive and did not appear to establish a strategic approach to effectively mitigate the complexities of issues and respond more effectively to the mass gatherings.
4. Use of ineffective and inappropriate strategies and tactics - There were instances where specific actions were taken that infringed upon constitutionally protected activities and were not aligned with current



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national best practices. These strategies and tactics had the unintended consequences of escalating rather than diminishing tensions.

5. Lack of law enforcement response continuity – Complicating factors were presented by the response of smaller municipal law enforcement agencies in the region, each with disparate missions, policies, training, equipment, and policing cultures.
6. Arrest procedures - When asked specifically about arrest guidelines and procedures, the assessment team received statements such as the following from those interviewed:

“there was no objective or strategy to manage the mass demonstrations, much less arrests”; “there was no plan in place for arresting people and no standard way to document the arrests...”; law enforcement on the scene stated they were “unclear who they could arrest”. (COPS Office Report at 36-37)

7. Use of Force – The use of canines for crowd control in Ferguson was an inappropriate and ineffective strategy. (COPS Office Report at XVI)

As with the USDOJ Civil Right Division's investigation of the Ferguson Police Department, the federal government through the After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri also made findings, including the following, which should be considered in an objective and impartial review of this case:

- 1) The deployment of less-lethal weapons in the multiagency response to the demonstrations was not centralized or tracked. The unprecedented nature of this event does not justify the lack of documentation and need to track the use of less-lethal responses. (COPS Office report at 52)
- 2) The assessment team identified the lack of thorough documentation on the use of CS gas (tear gas), including justification, deployments strategies and outcomes. The team also identified instances of tear gas

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- being deployed inappropriately without proper warnings, without sufficient attention paid to safe egress, and without consideration for environmental conditions. (e. g. weather, wind direction, proximity to a densely populated area, potential impact on the safety of the citizens as well as law enforcement). (COPS Office report at 51)
- 3) Unified command created a vague and arbitrary derivative of the Missouri failure to disperse statute the “keep moving” order or the “five second rule”, which violated citizen's right to assembly and free speech, as determined by a U.S. Federal Court Injunction. (COPS Office report at 64)
  - 4) Unified command failed to establish a clearly marked First Amendment free speech zone until August 19, 2014. This delay, coupled with the “keep moving” order, had an overall effect of discouraging protesters from exercising the First Amendment rights. (COPS Office report at 64)
  - 5) Incident command did not ensure that factors regarding arrest decisions were established and adequately conveyed to operational supervisors or frontline officers. (COPS Office report at 40)

**Professional Opinions/Conclusions and Basis for Opinions**

**1. Arrests were made without articulation and documentation of probable cause**

The plaintiffs were arrested by law enforcement and subsequently transported to the St. Louis County Justice Center for booking processes. Documentation has been provided regarding the booking process through the IJMS Inmate Short Profile forms that include the defendants name, charge, arresting officer and other pertinent information. What is glaringly absent is probable cause for each of the arrests. Arresting officers did not complete police reports, supplemental reports, charging documents or affidavits to establish the required probable cause to affect the arrests of the plaintiffs in this case.



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Reasonable and prudent law enforcement officers know and understand the principles of probable cause and arrests. The International Association of Chiefs of Police (IACP) National Law Enforcement Center defines an arrest as “taking a person into custody” and further defines probable cause as “when the facts and circumstances within an officer’s knowledge are sufficient to warrant a prudent person, or one of reasonable caution to believe the suspect has committed, is committed or is about to commit an offense. For an arrest to constitute a reasonable seizure under the Fourth Amendment, it must be supported by probable cause, which exists only if “the totality of facts based on reasonably trustworthy information would justify a prudent person in believing the individual arrested had committed an offense at the time of the arrest”. *Stoner v. Washington*, 735 F.3<sup>d</sup> 799, 803 (8<sup>th</sup> Cir. 2013)

Documentation of the existence of probable cause to affect an arrest is best achieved through the completion of police reports and charging documents or affidavits by the arresting officers to articulate and attest to each arrestee’s specific criminal act(s). While law enforcement is familiar with arrest procedures under normal conditions, agencies must plan and prepare for mass arrest operations. It is imperative that agencies maintain continuity and accountability of arrestees from the arrest site through the booking process. Standard prisoner processing procedures must begin at the time of arrest. These requirements include documentation arrest reports, charging documents or affidavits to include the probable cause but can also include photograph, control numbers, and wrist bands;

The lack of sufficient documentation surrounding the arrest of each of the plaintiffs including the conduct of each of the plaintiffs and the conduct of

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each of the law enforcement officers involved in the arrests of the plaintiffs causes the facts regarding the arrests to remain in dispute.

What is not in dispute is that the articulation and documentation of the probable cause to justify, support and to memorialize the probable cause of each of the arrests was not completed contemporaneously with the arrests or within a reasonable time frame. Disturbingly, the police reports were completed and approved in May of 2015, over eight (8) months after the arrests. Such a delay in reporting is unreasonable.

As noted by the Department of Justice, "there was no objective or strategy to manage the mass demonstrations, much less arrests"; "there was no plan in place for enforcement on the scene stated they were "unclear who they could arrest". (COPS Office Report at 36-37)

The failure to articulate and document the probable cause to justify, support and to memorialize the probable cause for an arrest contemporaneously with the arrest or within a reasonable time frame is not in line with widely accepted police practices, falls below the standard of care for arrests and is unreasonable and can lead to constitutional violations. Law enforcement officers are taught nationally that the articulation and documentation of the probable cause to justify and to memorialize the probable cause of each arrest is an essential element of policing and affords the defendants due process.

The arresting officers in the arrests of each of the plaintiffs chose not to follow the standard of care regarding arrests in each of the arrests of the plaintiffs to articulate and document the probable cause to justify, support and to memorialize the probable cause for an arrest contemporaneously with the arrests or within a reasonable time frame and that is



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unreasonable. Further, the expectation that a law enforcement officer will have complete and accurate recall of the facts regarding a specific arrest that occurred months earlier in the midst of a civil disturbance such as the Ferguson demonstrations is unreasonable.

Reasonable and prudent law enforcement officers would have followed this standard of care and widely accepted police practice regarding arrests and articulated and documented the probable cause and memorialized the probable cause for an arrest contemporaneously with the arrests through a police report in a reasonable time frame.

**2. Supervisory Oversight of Arrests and Articulation and Documentation of Probable Cause**

The failure of supervisory oversight of the arrests through a review of the police reports and any associated charging documents or affidavits to confirm the existence of probable cause and that the elements of the offense are contained in the police report and charging documents is not in line with widely accepted police practices and falls below the standard of care for supervision and oversight of arrests and that is unreasonable and can lead to constitutional violations.

Reasonable and prudent supervisors of law enforcement officers are taught nationally and know that the widely accepted police practice and the standard of care for documentation of arrests is for supervisory oversight, contemporaneously with the arrests or within a reasonable time frame to confirm the existence of probable cause and that all of the elements of the offense are contained in the police report and any associated charging documents or affidavits.

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The lack of sufficient documentation surrounding the arrest of each of the plaintiffs including the conduct of each of the plaintiffs and the conduct of each of the law enforcement officers involved in the arrests of the plaintiffs and of any supervisory review causes the facts regarding each of the arrests to remain in dispute.

The arresting officers in the arrests of each of the plaintiffs chose not to follow the standard of care regarding each arrest of the plaintiffs to articulate and document the probable cause to justify and to memorialize the probable cause for the arrest contemporaneously with the arrests or within a reasonable time frame and that is unreasonable.

Consequently, it was not possible for supervisors to conduct a review of the documentation of the arrests of the plaintiffs to confirm the existence of probable cause and that all of the elements of the offense are contained in the probable cause affidavit and police report, contemporaneously with the arrests or within a reasonable time frame and that is unreasonable and can lead to constitutional violations.

As mentioned previously, the police reports were completed and obtained final approval in May of 2015, over eight (8) months after the arrests. Such a delay in reporting and approval is unreasonable. Moreover, the fact that the reports were prepared by someone other than the arresting officer or any officer that was on the scene at the time of the arrest or communicated with any officer on the scene within a reasonable time after the arrest is unprecedented.



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**3. Use of Force**

Reasonable and prudent law enforcement officers know and understand that the use of excessive force by a law enforcement officer violates the Fourth Amendment. *Graham v. Conner*, 490 U.S. 386, 394 (1989); *Atkinson v. City of Mountain View, MO.*, 709 F.3d 1201, 1207-09 (8<sup>th</sup> Cir. 2013). The constitutionality of an officer's use of force depends on whether the officer's conduct was 'objectively reasonable' in light of the facts and circumstances" which must be assessed "from the perspective of a reasonable officers on the scene, rather than with the 20/20 vision of hindsight". *Graham*, 490 U.S. at 396.

Reasonable and prudent law enforcement officers also know and understand that the failure to document and justify the use of force by law enforcement officers contemporaneously with the application of the force or within a reasonable time frame is not in line with widely accepted police practices, falls below the standard of care for the use of force, is unreasonable and resulted in the clear indifference to the rights of plaintiffs.

Reasonable and prudent law enforcement officers who serve as supervisors know and understand that the failure to conduct a supervisory review of all instances of use of force by law enforcements officers under their supervision to confirm the documentation, justification and the reasonableness of the force contained in police reports and use of force reports is not in line with widely accepted police practices and falls below the standard of care for arrests, is unreasonable and resulted in a display of clear and deliberate indifference to the rights of plaintiffs and the citizenry who they are sworn to serve.

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As noted by the DOJ, the deployment of less-lethal weapons in the multiagency response to the demonstrations was not centralized or tracked. The DOJ also noted that the unprecedented nature of this event does not justify the lack of documentation and need to track the use of less-lethal responses. (COPS Office report at 52)

The DOJ further noted that the assessment team identified the lack of thorough documentation of the use of CS gas (tear gas), including justification, deployments strategies and outcomes. The team also identified instances of tear gas being deployed inappropriately without proper warnings, without sufficient attention paid to safe egress, and without consideration for environmental conditions. (e. g. weather, wind direction, proximity to a densely populated area, potential impact on the safety of the citizens as well as law enforcement). (COPS Office report at 51)

While the DOJ specifically reports on the deployment of less-lethal weapons and CS gas (tear gas), the documentation associated with the plaintiffs in this case failed to demonstrate the documentation of use of force, even use of force beyond less-lethal weapons and CS gas (tear gas) such as physical force, contemporaneously with the use of force or within a reasonable time frame. Such failure rendered any use-of-force review system or process to be essentially non-existent and ineffective in assuring that the force was used reasonably and that is an unequivocal deviation from applicable standards.

As with probable cause, when force is not reported, or documented contemporaneously with the use of force or within a reasonable time frame, and not reviewed through a use-of-force review system, such practice is not in line with widely accepted police practices and falls below



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the standard of care for the use of force, is unreasonable and can lead to constitutional violations.

#### **4. Decontamination and Medical Aid to Injured Prisoners**

Reasonable and prudent law enforcement officers know and understand that the failure to establish decontamination procedures and provide decontamination and first aid treatment to arrested persons who have been contaminated by chemical munitions or injured by less lethal munitions is not in line with widely accepted police practices, falls below the standard of care for the use of such munitions, is indicative of deliberate indifference to the rights of citizens, is unreasonable and can lead to constitutional violations.

#### **Conclusion**

In sum, the City of Ferguson, St. Louis County, Chief Jackson and Chief Belmar ("the municipal defendants") allowed an environment to exist in Ferguson, Missouri, following the death of Michael Brown, in particular the period of August 10-13, 2014, where law enforcement officers were not held accountable, were not required to provide probable cause for arrests and were not required to document the use of force. Allowing this environment to exist was inconsistent with all applicable standards of care and was in several respects, unprecedented in modern day law enforcement practices.

In allowing the environment discussed herein to exist, it was entirely foreseeable that constitutional rights would be violated, arrests without probable cause would be made and that force without reason would be used. The U.S. Department of Justice After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri detailed a situation that amounted to a complete failure of law enforcement to properly respond to its citizenry following

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the shooting death of Michael Brown. The records reviewed herein fully documents specific failures on the part of law enforcement amounting to policies and practices on the part of the defendants that exhibited a reckless disregard and deliberate indifference for the rights of citizens and was a proximate cause of the injuries suffered by the plaintiffs in this case.

This concludes my findings, conclusions and opinions at this time. I respectfully reserve the right to supplement or otherwise modify my opinions based on the receipt and examination of additional information.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Robert R. Pusins".

Robert R. Pusins





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2  
3 APPEARANCES:

4 GREGORY L. LATTIMER, Esquire,  
5 Appearing on behalf of the Plaintiffs.

6 MICHAEL E. HUGHES, Esquire,  
7 Associate County Counselor,  
8 County of Saint Louis, Missouri,  
9 Appearing on behalf of the Defendants.

10 ROBERT T. PLUNKERT, Esquire,  
11 Pitzer Snodgrass, P.C.,  
12 Appearing on behalf of the Defendants.  
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I N D E X

WITNESS

ROBERT R. PUSINS

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1 Deposition of ROBERT R. PUSINS, a Witness herein,  
2 taken on behalf of the Defendants herein, for the  
3 purpose of discovery and for use as evidence in this  
4 cause, pending in the United States District Court of  
5 the Eastern District of Missouri, Eastern Division,  
6 before JENNIFER A. POLEO, Certified Shorthand Reporter,  
7 a Notary Public within and for the State of Florida at  
8 Large, pursuant to notice heretofore filed on the 7th  
9 day of January, 2016, commencing at the hour of 9:15  
10 o'clock a.m.

11 - - -

12 Thereupon,

13 ROBERT R. PUSINS,  
14 having been first duly sworn, was examined and testified  
15 upon his oath as follows:

16 DIRECT EXAMINATION

17 BY MR. HUGHES:

18 Q. State your name, please.

19 A. My name is Robert Pusins, P-U-S-I-N-S.

20 Q. Sir, you've given depositions before,  
21 correct?

22 A. Yes.

23 Q. Can you give me an estimate of how many times  
24 through the years you've given a deposition as an expert  
25 witness, a paid witness?

1 A. Perhaps 20 depositions.

2 Q. And how many times have you given a  
3 deposition as a police officer?

4 A. I would say well over a hundred times that  
5 I've been deposed in my life as a law enforcement  
6 officer.

7 Q. And were those in criminal cases you gave  
8 depositions?

9 A. Yes.

10 Q. Well, I'm not interested in that at the  
11 moment, but what about civil cases? How many times have  
12 you given depositions in a civil case?

13 A. Approximately 20 times if I had to estimate.

14 Q. Okay.

15 A. Without counting.

16 Q. And those 20 times, were you or, I guess,  
17 your department personally named as a defendant in a  
18 lawsuit?

19 A. No.

20 Q. How many times did you give testimony in  
21 civil cases where either you or your city or your  
22 department was named as a defendant in a lawsuit?

23 A. I believe once.

24 Q. What were those other 19 times when you gave  
25 depositions in civil cases?



1           A.     I gave depositions as an expert in -- in  
2 police practices and police procedures.

3           Q.     To mean you gave depositions as an expert and  
4 you did not get paid for it?

5           A.     I've always been paid for my depositions.

6           Q.     Right. Okay. But I asked you how many times  
7 through the years you gave a deposition as a law  
8 enforcement officer.

9           A.     I would say over a hundred times as a law  
10 enforcement officer.

11          Q.     And most of them are criminal cases, and you  
12 said about 20 times as a law enforcement officer you  
13 gave depositions in civil cases?

14          A.     I understood your question to be how many  
15 times have you been deposed in civil cases.

16          Q.     Right.

17          A.     My answer was I estimated 20.

18                 You then asked me how many times have I been  
19 deposed as a law enforcement officer, and my answer was  
20 over a hundred.

21          Q.     I understand you said maybe 20 times as a  
22 paid witness.

23                 How many times did you give depositions that  
24 were not criminal cases and were not as a paid witness?

25          A.     Perhaps once.

1 Q. And were you a defendant in the lawsuit  
2 then?

3 A. I was not.

4 Q. Well, you've obviously given a lot of  
5 depositions, so I'm going to be asking you a number of  
6 questions.

7 If the answer to a question calls for a yes  
8 or a no response, can you first answer the question with  
9 either a yes or a no, and then if for some reason you  
10 wish to expand on the answer, you can do so afterwards?

11 Is that fair?

12 A. If it's possible to answer the question with  
13 a yes or no, I will.

14 Q. You'll try to?

15 A. I will try to, yes.

16 Q. But, you know, if you can answer with a yes  
17 or a no and then expand if you wish to explain your yes  
18 or no, can you do it that way?

19 MR. LATTIMER: I'm going to object to that.

20 You can't tell the Witness how to answer a  
21 question.

22 He's indicated that if the question calls for  
23 a yes or no answer, he will provide a yes or no  
24 answer if that's the answer that he deems  
25 appropriate, but I strenuously object to you even



1 suggesting as to how he should answer questions,  
2 and I directly tell the witness that he is not to  
3 answer questions the way you believe he should  
4 answer questions.

5 He should answer the questions as he deems  
6 appropriate at all times.

7 BY MR. HUGHES:

8 Q. Mr. Lattimer just gave a long statement. Is  
9 he your attorney in this case?

10 A. He is not.

11 Q. Now, I understand you formed your opinions in  
12 this case. I want to ask you about that.

13 You know, first of all, I'm sure you've  
14 spoken to Mr. Lattimer, maybe the other two attorneys  
15 representing the Plaintiffs in this case, but I want to  
16 know have you spoken to anyone else to help form your  
17 opinions, such as, you know, a Chief of Police  
18 somewhere, someone involved in law enforcement, a law  
19 professor, a professional?

20 A. No.

21 Q. Have you done any research to help form your  
22 opinions in this case?

23 A. Yes.

24 Q. What research did you do?

25 A. Specifically I recall reviewing the standards

1 from the Commission on Accreditation for Law Enforcement  
2 Agencies.

3 I also reviewed model policies from the  
4 International Association of Chiefs of Police.

5 In my current occupation and position I  
6 routinely review information from the Police Executive  
7 Research Forum, from the Americans for Effective Law  
8 Enforcement, from other sources of information regarding  
9 law enforcement.

10 Q. Is Wayne Schmidt still involved with the  
11 AELE?

12 A. I don't know.

13 Q. Okay. Have you ever gone to any of their  
14 seminars?

15 A. I have.

16 Q. Okay.

17 A. So I -- I'm constantly reading, reviewing,  
18 seeing material about --

19 Q. Okay.

20 A. -- current issues in law enforcement.

21 Q. But in this I'm asking you did you do  
22 specific research -- not just your, you know, general  
23 stuff you do every day but specific research for this  
24 case?

25 Did you pick up something and look at it?

1 A. Yes, and that's what I described.

2 Q. Okay.

3 A. But I also am trying to explain that in  
4 addition to that specific research, I also glean  
5 information that may be pertinent to this case from my  
6 normal course of activities with the Broward Sheriff's  
7 Office.

8 Q. With what?

9 A. With the Broward Sheriff's Office. That's  
10 where I'm employed.

11 Q. Did you do any research to gather facts that  
12 would be helpful in forming your opinions in this case?

13 A. No.

14 Q. Now, I looked at your resume and I see that  
15 you have a Bachelor's Degree in sociology from the  
16 University of South Florida; is that correct?

17 A. Yes.

18 Q. What year did you obtain your degree from  
19 University of South Florida?

20 A. 1974.

21 Q. And what years did you take classes or attend  
22 college at University of Southern Florida, South  
23 Florida?

24 A. 1972 to 1974.

25 Q. So did you go to somewhere before that, like



1 a community college or some other college?

2 A. Yes.

3 Q. What was that?

4 A. I attended Miami-Dade Community College or at  
5 the time it was called Miami-Dade Junior College -- it's  
6 currently called Miami-Dade College -- from 1970 to  
7 1972.

8 Q. And other than your Bachelor's Degree, do you  
9 have any post-graduate degrees?

10 A. I do not.

11 Q. Did you ever attend any post-graduate -- did  
12 you ever start any Master's program?

13 A. No.

14 Q. Have you ever served as a line commander in  
15 SWAT or Tact?

16 A. No.

17 Q. Have you ever served as a line commander in a  
18 Civil Disturbance Response Team?

19 A. No.

20 Q. Okay.

21 A. But let me go back to the previous question  
22 about SWAT.

23 SWAT was under my command for a number of  
24 years when I was with the Fort Lauderdale Police  
25 Department, but I was not the direct SWAT commander.

1 The SWAT commander reported to me.

2 Q. So just so I understand, you've never been a  
3 Sergeant, Lieutenant or Captain responsible for the  
4 first line operation of SWAT?

5 A. That's correct.

6 Q. And you've never been a Sergeant, Lieutenant  
7 or Captain responsible for first line operation of  
8 Tact?

9 MR. LATTIMER: Of what?

10 BY MR. HUGHES:

11 Q. You know, Tactical Operations Division.

12 A. That's correct.

13 Q. And you've never been a Sergeant, Lieutenant  
14 or a Captain responsible for first line of Civil  
15 Disturbance Response Team; is that correct?

16 A. Correct.

17 Q. Have you had any specific training in the  
18 civil disturbance response?

19 A. Yes.

20 Q. I assume you had it, of course, in the Police  
21 Academy?

22 A. Yes.

23 Q. Anywhere else?

24 A. Yes.

25 Q. Where?

1           A.       Throughout my career. Field force training  
2       was part of in-service training with the Fort Lauderdale  
3       Police Department.

4                   I've also had training on incident command,  
5       both from the State of Florida, as well as I believe the  
6       Department of Justice.

7           Q.       Well, I guess what I'm asking is, you know,  
8       there would be like a specific 40-hour course you'd get  
9       a certificate for in, I assume, Broward County and other  
10      places for civil disturbance response.

11                   Have you ever done that?

12                   MR. LATTIMER: Objection, assumes facts not  
13      in evidence.

14                   THE WITNESS: I didn't bring my entire  
15      training resume with me, but I'll repeat that  
16      throughout my -- my career I've had in-service  
17      training regarding field force responses,  
18      participated in field force exercises.

19      BY MR. HUGHES:

20           Q.       Okay.

21           A.       But have I -- but I have not attended a  
22      40-hour -- I don't recall attending a 40-hour class as  
23      you're describing.

24           Q.       All right. And you have no -- I've looked at  
25      your curriculum vitae.



1           You have no command experience in civil  
2 disturbances; is that correct?

3           A.     Correct.

4           Q.     So just so I understand, you've never been  
5 standing commanding people in the middle of a riot?

6           A.     You would have to define a riot. I've --  
7 I've certainly stood in command of police officers  
8 during disturbances during my career.

9           Q.     All right. And you've never been the Chief  
10 of Police of a police department?

11          A.     That's correct.

12          Q.     And the highest rank you had in the City of  
13 Fort Lauderdale, Florida was Major?

14          A.     I was an Assistant Chief.

15          Q.     And -- okay.

16                   That was for a year?

17          A.     It may have been longer than a year, but it  
18 was somewhere around 2001, 2000 to 2001 or 2002,  
19 somewhere in that range.

20          Q.     Did you then retire or what?

21          A.     I retired in 2004.

22          Q.     So in 2003 and 2004 you were not the  
23 Assistant Chief?

24          A.     That's correct.

25          Q.     What were you?

1 A. I was a Major.

2 Q. Okay. So you retired from the  
3 Fort Lauderdale Police Department as a Major; is that  
4 correct?

5 A. Yes.

6 Q. And that was in 2004?

7 A. Yes.

8 Q. So for eleven or twelve years you've not been  
9 a member of any police department?

10 A. For approximately eight years I was not a  
11 member of a police department.

12 For the past three years I've been a member  
13 of the command staff of the Broward Sheriff's Office  
14 here in Fort Lauderdale, Florida.

15 I continue to serve in that capacity.

16 Q. Well, what did you do for those eight years,  
17 anything, before you went to the Broward County  
18 Sheriff's Office?

19 A. I consulted as an expert in police practices  
20 and police procedures.

21 Q. So presently and for the past three years  
22 you've been employed with the Broward County Sheriff's  
23 Office, correct?

24 A. Yes.

25 Q. And from what I read, you're head of

1 Community Services; is that correct?

2 A. Yes.

3 Q. And that includes things like communications,  
4 public information officer, youth and neighborhood  
5 services; is that correct?

6 A. That's my general responsibilities, but I'm  
7 involved in a lot more activities than those  
8 activities.

9 Q. You're not commanding any patrol officers?

10 A. I am not.

11 Q. Okay.

12 A. Well, let me rephrase that.

13 I do have patrol officers all the way up to  
14 Captains under -- under my command, and I've had Majors  
15 under my command during my time with the Broward  
16 Sheriff's Office.

17 Q. Well, Broward Sheriff's Office, I know they  
18 have a law enforcement division, I believe, detention,  
19 administration, fire, rescue, things like that; is that  
20 correct?

21 A. Yes.

22 Q. You're not in charge of those?

23 A. Not those particular commands, but in the  
24 Department of Community Services, there are other sworn  
25 personnel that are assigned to that department, and I'm



1 the head of that department.

2 Q. You're not patrolling the streets, though; is  
3 that correct?

4 A. Correct.

5 Q. Now, we've been provided with a list of cases  
6 where you gave deposition testimony going back to the  
7 year 2009.

8 Is that up to date? I mean, I guess there's  
9 two listed in 2015.

10 Are there any other recent ones?

11 A. No. This seems to be complete.

12 Q. Okay. Thank you.

13 I see that you gave testimony in some  
14 wrongful death cases; is that correct?

15 A. Yes.

16 Q. And I assume those cases you indicated that  
17 excessive force was used, so excessive it caused a death  
18 or contributed to cause a death?

19 A. We would have to look at a specific case  
20 'cause I'm not sure which case you're talking about.

21 Q. Well, let me ask you this: Have you ever  
22 given testimony in any of these cases, have you given  
23 testimony or in any case where you said that excessive  
24 force was used such that would shock the conscience even  
25 though there were little or no injuries and the

1 plaintiff was not admitted to the hospital for even one  
2 night in any of these cases or any other cases?

3 MR. LATTIMER: Are you talking about death  
4 cases?

5 BY MR. HUGHES:

6 Q. No, no. I'm talking about cases where it  
7 wasn't a death where you said, you know, there was  
8 excessive force.

9 So excessive force often is such that would  
10 shock the conscience, but has there ever been a case  
11 where you said there was excessive force even though  
12 there were little or no injuries to the plaintiff and  
13 the plaintiff was not admitted to the hospital for even  
14 one night?

15 MR. LATTIMER: Objection as to relevance,  
16 materiality, but you can answer to the extent you  
17 can.

18 THE WITNESS: Yes.

19 BY MR. HUGHES:

20 Q. Which one was that?

21 MR. LATTIMER: Same objection as to relevance  
22 and materiality.

23 THE WITNESS: Case Number 5, Scheib versus  
24 Boderck.

25 - - -

1 BY MR. HUGHES:

2 Q. Do you recall what that was about?

3 A. Yes.

4 Q. What was it?

5 A. Dr. Scheib was arrested by Deputy Boderck on  
6 his property in Tennessee and he was charged with, if I  
7 recall the facts correctly, he was charged with a  
8 possession of a firearm by an intoxicated person, and  
9 Deputy Boderck used force to take him into custody and I  
10 don't recall that Dr. Scheib was hospitalized as a  
11 result of that force.

12 Q. Any others?

13 A. Yes. Fountain versus the City of Lakeland.

14 Q. What number is that?

15 A. Number 6.

16 Q. All right. You have that listed as a Terry  
17 stop and false arrest, is that correct, and also force?

18 A. Yes.

19 Q. So what were the facts of that case?

20 MR. LATTIMER: Again, objection as to  
21 relevance and materiality, but you can answer the  
22 question.

23 THE WITNESS: Mr. Fountain was sitting in a  
24 police -- in a -- in his vehicle when he was  
25 approached by a police officer for the Lakeland



1 Police Department.

2 It was my opinion that the police officer did  
3 not have reasonable cause or reasonable suspicion  
4 to make that contact to start with, that  
5 Mr. Fountain was free to leave.

6 Mr. Fountain tried to leave and force was  
7 used against him to take him into custody, and I  
8 don't recall if Mr. Fountain was hospitalized as a  
9 result of that force.

10 BY MR. HUGHES:

11 Q. Do you recall what the injury was?

12 A. I don't recall.

13 Q. You don't? Okay.

14 Anything else?

15 A. Number 14, Gabriel DaSilva was -- he was  
16 treated at a hospital and he was later hospitalized for  
17 complications that arose out of his injury, and that  
18 was --

19 Q. He was hospitalized?

20 A. He was treated at the hospital, so is that  
21 something that you want to talk about?

22 Q. Okay. He was treated and released? Okay.

23 A. And then later hospitalized.

24 Q. Later hospitalized. Okay.

25 You testified against the Broward Sheriff's

1 Office?

2 A. I did.

3 Q. Anything else?

4 A. On this list, no.

5 Q. Okay. Now, I was looking at this list, and  
6 in every single case that you gave testimony for it was  
7 on behalf of the plaintiff with one exception, and that  
8 exception was where the plaintiff was a governmental  
9 entity.

10 Is that correct?

11 A. On this list, yes.

12 Q. Are there any cases where you've testified  
13 for -- well, is there any cases where a police  
14 department has hired you as an expert witness that you  
15 gave testimony on?

16 I know none are listed here, but has there  
17 been any?

18 A. I was hired by the Tallahassee Police  
19 Department as an expert on a arrest case.

20 Q. When was that?

21 A. I don't recall the date.

22 Q. Approximately how many years ago?

23 A. Sometime between the time I retired from  
24 Fort Lauderdale and the time in -- and the time I joined  
25 the Sheriff's Office in 2013.

1 Q. Did that go to trial or was your deposition  
2 given?

3 A. It was not. It did not go to trial and I did  
4 not give a deposition.

5 Q. All right. But they asked you to take a look  
6 at this, is that correct, and you did?

7 A. Correct.

8 Q. We were furnished with your Fee and Retainer  
9 Agreement that's dated August 19th, 2015.

10 I guess we might as well mark this A, I  
11 guess.

12 (Thereupon, Defendant's Exhibit A was marked  
13 for identification.)

14 MR. HUGHES: Thank you. You've all got a  
15 copy?

16 MR. PLUNKERT: Sure. Is it the CV?

17 MR. LATTIMER: No, the fee agreement.

18 MR. HUGHES: I mean, do you want it?

19 MR. LATTIMER: No. I just wanted to make  
20 sure that was what I provided to you.

21 MR. HUGHES: Okay.

22 MR. PLUNKERT: By the way, you agree that  
23 Mr. Hughes and I delivered two checks to you, one  
24 for 1,250, the other for 1,250, before this  
25 deposition began, right?

1 THE WITNESS: Yes.

2 MR. PLUNKERT: Okay. That's all.

3 THE WITNESS: Thank you.

4 BY MR. HUGHES:

5 Q. So according to this, according to what was  
6 dated August 19th, 2015, you required a non-refundable  
7 retainer fee of \$3,000; is that correct?

8 A. Yes.

9 Q. Was that sent to you by Mr. Lattimer, the  
10 check?

11 A. Yes.

12 Q. Before Mr. Lattimer sent you the \$3,000  
13 check, did he discuss the case with you?

14 A. Yes.

15 Q. Okay. Do you recall what he said about the  
16 case?

17 A. I don't recall the specific conversation, but  
18 in general terms it had to do with would I be interested  
19 in assisting his firm with a case out of Ferguson and  
20 taking a look at the documents, and I -- I said, "Yes, I  
21 would be interested in assisting you."

22 Q. Did you take notes or type notes of what he  
23 said to you?

24 A. No.

25 Q. And I mean, did he go into details about the



1 facts of the case?

2 A. I don't recall whether he did or not or how  
3 detailed the description he gave me.

4 I do recall in general terms that he  
5 indicated that he represented a number of plaintiffs who  
6 were arrested in Ferguson and wanted to know if I was  
7 interested in assisting him, and I said I was.

8 Q. Do you recall when he sent you the \$3,000  
9 check?

10 A. Yes. It's in my notes.

11 Q. When was it?

12 You have notes? Okay. Can you get those  
13 notes?

14 A. October 20th of 2015.

15 Q. I'm sorry. What?

16 A. I received the retainer fee on October 20th  
17 of 2015.

18 Q. Now, according to the retainer agreement, you  
19 bill monthly at \$300 per hour; is that correct?

20 A. Yes.

21 Q. Just so I understand, it says your trial  
22 testimony is \$3,000 for each day.

23 Is that \$3,000 for each day you're on the  
24 witness stand?

25 Because you also say stand-by days are billed

1 at \$2,000 per day plus expenses, so can you explain that  
2 to us?

3 A. Yes. If I'm testifying, my fee would be  
4 \$3,000 per day.

5 If I am not testifying but I'm on stand-by  
6 and I'm sitting in a hotel room someplace or in a  
7 hallway waiting to testify and I don't testify that day,  
8 I charge for my time.

9 Q. Okay. And what you charge is \$2,000 a day  
10 or --

11 A. Yes.

12 Q. If you're asked to testify at trial in this  
13 case, are you willing to come to St. Louis to give  
14 testimony?

15 A. Yes.

16 Q. Do you already have it on your calendar?

17 A. No.

18 Q. And then for any depositions including  
19 today's deposition, you required a flat rate of \$2,500;  
20 is that correct?

21 A. Yes.

22 Q. And I think your fee says that's for seven  
23 hours of testimony?

24 A. I'm here for the whole day.

25 Q. Okay.

1           A.     And if the testimony goes seven hours, I'm  
2 here at your pleasure.

3           Q.     So you charged us more than \$300 an hour; is  
4 that correct?

5           A.     I guess if you did the math.  
6                   What I charge is a flat fee because I  
7 dedicate this -- I block out this whole day for  
8 deposition.

9           Q.     All right. How much time have you spent on  
10 this case so far?

11          A.     I haven't kept my time entry sheet up to  
12 date, but I'm going to say somewhere in the -- in the  
13 vicinity of fifteen hours or more.

14          Q.     How many?

15          A.     Fifteen hours or more.

16          Q.     Have you read all the police reports that  
17 were sent to you?

18          A.     Yes.

19          Q.     Have you read all of the depositions that  
20 were sent to you?

21          A.     Yes.

22          Q.     It looks like a 176-page COPS Report was sent  
23 to you and a 184-page After-Assessment Report was sent  
24 to you.

25                   Did you read those?

1 A. Yes.

2 Q. You said it was just fifteen hours reading  
3 all that?

4 A. No, I didn't say that. I said I estimated --  
5 I haven't kept my time up to date, but in scanning what  
6 I have right here, I came up with a quick fifteen  
7 hours.

8 It's probably a lot more. I just don't have  
9 a definitive number for you because I haven't checked.

10 Q. Would it be over a hundred hours?

11 A. No.

12 Q. Could it be over 80 hours?

13 A. No.

14 Q. Could it be over 40 hours?

15 A. Probably not.

16 Q. Have you billed Mr. Lattimer or anyone  
17 else -- your fee agreement indicates you will bill  
18 monthly, so have you been billing monthly to him?

19 A. No, I am not.

20 Q. Have you sent them any bill yet other than --  
21 you know, after you received the initial retainer of  
22 \$3,000?

23 A. No.

24 Q. Have you reviewed any other cases from  
25 Mr. Lattimer?



1 A. Yes.

2 Q. How many?

3 A. One.

4 Q. Is that pending?

5 A. Yes.

6 Q. What is that called?

7 A. Grimes, G-R-I-M-E-S, versus Washington, D.C.  
8 or the District.

9 Q. What is Grimes' first name; do you know?

10 A. I don't recall.

11 MR. LATTIMER: Keith.

12 MR. HUGHES: Thank you.

13 BY MR. HUGHES:

14 Q. So is that Washington, D.C., their police  
15 officers or police department?

16 A. Yes.

17 Q. Do you know who's representing them?

18 A. I do not.

19 Q. Are they government employees, like me,  
20 or --

21 A. I don't know.

22 Q. Is that set for trial?

23 A. I don't know.

24 Q. When were you retained in that case?

25 A. I don't recall the date that I was retained.

1 Q. What is that case about?

2 A. It's about a repeated police response to  
3 Mr. Grimes' apartment with allegations that a sexual  
4 assault is in progress.

5 The calls were made by a person who suffers  
6 from mental illness and culminated in an arrest and  
7 detention of Mr. Grimes.

8 Q. So you said that's pending, so was this  
9 retention like in the last year or within the last two  
10 years?

11 A. Yes.

12 Q. Have you reviewed any other cases for  
13 Mr. Malik Shabazz, M-A-L-I-K Shabazz or Mr. Reginald  
14 Greene?

15 A. No.

16 Q. Did Mr. Lattimer ever tell you how he got  
17 your name?

18 A. He may have, but I don't recall.

19 Q. I mean, your name is out there, like for  
20 example, your website advertises your services as an  
21 expert witness; is that correct?

22 A. No, I don't have a website.

23 Q. You don't have a website? I thought you did.  
24 Okay.

25 How do people learn that you're out there as

1 an expert witness for police practices?

2 A. I'm hoping it's from referrals from other  
3 attorneys that I've worked for, and I also advertise on  
4 two specific Internet directories --

5 Q. Okay.

6 A. -- for experts.

7 Q. That's what I saw. Okay.

8 In addition to advertising on two Internet  
9 directories, do you advertise in other places, you know,  
10 magazines for attorneys or --

11 A. No.

12 Q. I know the tax year just ended this past  
13 week, but have you calculated how much you earned in the  
14 year 2015 for your consultation practice?

15 A. Yes.

16 Q. How much is it?

17 A. 15,000.

18 Q. Do you know what your income was for the year  
19 2014 --

20 A. Yes.

21 Q. -- for consultation?

22 MR. PLUNKERT: 2015? Do you mean 2015?

23 MR. HUGHES: '14. He said 2015 already.

24 MR. PLUNKERT: Oh, sorry, sorry.

25 MR. HUGHES: It was 15,000.

1 THE WITNESS: 2014 my income was 26,000 and  
2 change, \$26,340.

3 BY MR. HUGHES:

4 Q. And 2013?

5 A. 16,249.

6 Q. And 2012?

7 A. 55,789.

8 Q. Can I see what you're looking at?

9 A. Sure. (The Witness complied.)

10 Q. And according to this, your consulting income  
11 in 2011 was \$101,505; is that correct?

12 A. Yes.

13 Q. Do you have an extra copy of this?

14 A. You could have that copy.

15 MR. HUGHES: Why don't we mark that as  
16 Exhibit B.

17 (Thereupon, Defendant's Exhibit B was marked  
18 for identification.)

19 BY MR. HUGHES:

20 Q. For the record, would you just tell us what  
21 Exhibit B is?

22 How would you describe that?

23 A. It's a response to your request that I  
24 produce records of my income for my consulting business  
25 for the last four years.



1 Q. Okay.

2 A. So I went back to 2011, which would actually  
3 be five years because it would include 2015.

4 Q. I guess the 2011, your income was 101 -- your  
5 consulting income was \$101,505, but in 2011 you were not  
6 working for Broward County Sheriff's Department; is that  
7 correct?

8 A. Correct.

9 Q. So is that typical of what you were earning  
10 up to that point for the like five years before then?

11 A. I would say 2011 was a good year.

12 Q. Yeah?

13 A. So I may not have cracked a hundred thousand  
14 in the previous years.

15 Q. By the way, I saw in your resume your  
16 address.

17 You don't live in the City of  
18 Fort Lauderdale; you live in Pompano Beach?

19 A. Pompano.

20 Q. Pompano Beach?

21 A. Yes.

22 Q. Is that a suburb?

23 A. Yes, it's an adjoining city.

24 Q. Yeah?

25 A. And I just happened to look at my notes here,

1 so earlier I said I made 15,000 in 2015, but looking at  
2 my note, I believe it's only 13,000 so far.

3 Q. Okay.

4 A. Or in 2015.

5 Q. All right. Okay. That's fine.

6 MR. PLUNKERT: Do you mind if I take a look  
7 at that?

8 MR. HUGHES: Sure.

9 MR. PLUNKERT: Thank you.

10 BY MR. HUGHES:

11 Q. Now, under Rule 26 of the Federal Rules of  
12 Civil Procedure you're required to prepare a report that  
13 contains a complete statement of all of your opinions.

14 You understand that?

15 A. Yes.

16 Q. And we were furnished an 18-page report.

17 That is dated December 13th, 2015. This is  
18 the report that you prepared?

19 A. Are you going to hand it to me?

20 Q. Yeah, sure.

21 A. Yes.

22 Q. So does that express all of your opinions in  
23 this case?

24 A. As of today, and if I'm asked other opinions,  
25 I'll be glad to provide them.

1 Q. Well, okay. I mean, we prepared for the  
2 opinions listed in the 18-page report.

3 Are there additional opinions that you know  
4 you're going to render?

5 A. No.

6 Q. You know, on Page 11 of your report you  
7 indicate that probable cause exists if the totality of  
8 facts based on reasonably trustworthy information would  
9 justify a prudent person -- I guess you mean a prudent  
10 police officer -- in believing the individual arrested  
11 had committed an offense at the time of the arrest.

12 Here, I have a copy.

13 A. Are you asking me a question or --

14 Q. If you want to look at it.

15 But when you give opinions regarding  
16 probable cause, that's what you rely on, just so I  
17 understand?

18 MR. LATTIMER: Where are you talking about?

19 You're on Page 12 where?

20 MR. HUGHES: 11.

21 MR. LATTIMER: 11?

22 MR. HUGHES: Yeah.

23 THE WITNESS: When I give opinions on  
24 probable cause, I'm relying on all of my training,  
25 knowledge, experience in over 30 years of law

1 enforcement including this statement about probable  
2 cause.

3 BY MR. HUGHES:

4 Q. But you agree probable cause exists if in the  
5 totality of facts based on reasonably trustworthy  
6 information a prudent person would believe the  
7 individual arrested had committed some offense at the  
8 time of the arrest; is that correct?

9 A. I would believe that, yes.

10 Q. And then on Page 15 you talk about  
11 constitutionality of an officer's use of force, and you  
12 indicate that it depends on whether the officer's  
13 conduct was objectively reasonable in light of the facts  
14 and circumstances which must be assessed from the  
15 perspective of reasonable officers on the scene rather  
16 than 20/20 vision or hindsight; is that correct?

17 A. Yes.

18 Q. All right. Vision of hindsight. Okay.

19 So in assessing whether or not, you know, an  
20 officer used too much force, you do rely on what is  
21 objectively reasonable in light of the facts and  
22 circumstances which must be assessed from the  
23 perspective of reasonable officers on the scene; is that  
24 correct?

25 A. Yes.



1 Q. All right. Your report talks about an  
2 After-Action Assessment; is that correct?

3 A. Yes.

4 Q. You referred to that.

5 And that After-Action Assessment concentrated  
6 on 16 days in Ferguson; is this correct?

7 A. Yes.

8 Q. So for at least 16 days and perhaps longer,  
9 but the After-Action Assessment covered a period of 16  
10 days when there was rioting and unrest in Ferguson; is  
11 that correct?

12 A. Yes.

13 Q. And you personally have never been involved  
14 in anything like that where there was 16 or more days of  
15 civil unrest and rioting; is that correct?

16 A. Yes.

17 Q. And it would be a fair statement that the  
18 Department of Justice has never called you up for advice  
19 on what to do when there is civil unrest or rioting in  
20 any city; is that correct?

21 A. That's correct.

22 Q. And neither has any other city police  
23 department?

24 A. That's correct.

25 Q. And the fact that this civil unrest and

1 rioting occurred at least 16 days, it indicates that  
2 there was some unprecedented conditions occurring; is  
3 that correct?

4 A. I don't know if I would agree with  
5 unprecedented conditions because there has been civil  
6 unrest and disturbances in quite a number of cities in  
7 our country over decades.

8 Q. Okay. Very good.

9 So tell me about some of them. Tell me what  
10 you know about the history of civil unrest in our  
11 country over decades.

12 MR. LATTIMER: Objection as to relevance and  
13 materiality.

14 THE WITNESS: There's been civil disturbances  
15 and unrest in quite a number of our cities over the  
16 years.

17 BY MR. HUGHES:

18 Q. Well --

19 A. Including New York City, Washington, D.C.,  
20 Baltimore, Miami. The list goes on. Detroit,  
21 Chicago.

22 So there have been civil unrests.

23 Q. I guess Watts too?

24 A. Yes.

25 Q. Cincinnati?

1 A. Yes.

2 Q. Do you know how many people were killed in  
3 Watts by police officers?

4 A. No.

5 Q. Do you know how many people were killed in  
6 Detroit by police officers?

7 A. Are you speaking of being killed during civil  
8 disturbances?

9 Q. Yes. Yes, I'm limiting it to that.

10 A. No.

11 Q. I apologize --

12 A. I don't know.

13 Q. -- for not making that clear. Okay.  
14 What about in New York City?

15 A. I wouldn't know the answer to any of  
16 those --

17 Q. Okay.

18 A. -- disturbances.

19 Q. But you know in these other cities when  
20 there's been large-scale civil unrests, spontaneous  
21 rioting, people were killed at the hands of police; is  
22 that correct?

23 MR. LATTIMER: Objection as to relevance and  
24 materiality.

25 - - -

1 BY MR. HUGHES:

2 Q. I mean, you know that from a historical  
3 standpoint as a police expert even?

4 A. Yes, people have been killed by the police.

5 Q. Do you know how many people were killed in  
6 Ferguson at the hands of police?

7 A. I don't --

8 MR. LATTIMER: Objection as to relevance and  
9 materiality.

10 BY MR. HUGHES:

11 Q. You don't know?

12 A. I started to answer and he objected.

13 Q. Okay.

14 A. One person that I'm aware of that was killed  
15 at the hands of the police.

16 Q. Well, that's one person I haven't heard of.  
17 Who was that?

18 I mean, I'm not aware of that.

19 A. Michael Brown was killed at the hands --

20 Q. Oh.

21 A. -- at the hands of the police to answer your  
22 question.

23 Q. Okay. Michael Brown was killed by a police  
24 officer after which there were at least 16 days of  
25 rioting, civil disturbances; is that correct?

1 A. Yes.

2 Q. During this 16 days of rioting and civil  
3 disturbances how many people were killed in Ferguson at  
4 the hands of police?

5 MR. LATTIMER: Objection as to relevance and  
6 materiality.

7 THE WITNESS: I'm not aware of any.

8 BY MR. HUGHES:

9 Q. How many people were seriously injured in  
10 Ferguson during this time of civil unrest and rioting at  
11 the hands of police?

12 A. I don't know.

13 Q. Now, when this Ferguson rioting was  
14 occurring, were you paying any attention to it?

15 A. I --

16 Q. Were you watching CNN, reading newspapers;  
17 were you paying attention?

18 A. I was aware to a certain degree what was  
19 going on in Ferguson.

20 Q. What do you mean by that?

21 A. Through media reports.

22 Q. When you said you were aware to a certain --  
23 I mean, did people in the Broward County Sheriff's  
24 Department talk about it?

25 A. Yes.



1 Q. And did your colleagues talk about it in  
2 Broward County and any other people you consider a law  
3 enforcement colleague; did they talk about it?

4 A. Yes.

5 Q. And did you hear that people were amazed at  
6 the incredible restraint used by the police?

7 MR. LATTIMER: Objection as to relevance and  
8 materiality.

9 THE WITNESS: I don't recall specifically  
10 hearing that somebody was amazed at the restraint  
11 shown by the police.

12 BY MR. HUGHES:

13 Q. All right. Well, what did you hear from  
14 colleagues?

15 A. General conversations as anybody would have  
16 when there's a incident going on in our country or an  
17 incident going on in our world that's related to law  
18 enforcement.

19 Q. What were your colleagues saying about the,  
20 you know, command that was handling the Ferguson  
21 uprising, civil disturbance?

22 A. I don't recall any specific recollection of  
23 comments about the command of the police in response to  
24 the disturbance in Ferguson.

25 Q. Just so I understand, things were going on in

1 Ferguson for really longer than 16 days but 16 days that  
2 was concentrated on by the After-Action Assessment and  
3 your colleagues really had no comments that you can  
4 recall about the command of the police in Ferguson or  
5 the restraint that was used?

6 MR. LATTIMER: Objection as to relevance and  
7 materiality.

8 BY MR. HUGHES:

9 Q. Just so I understand.

10 A. I don't recall with specifics conversations  
11 that took place in August of 2014 as we sit here in  
12 January of 2016, so I don't think it will be fair to try  
13 to recall with specificity comments regarding the  
14 command of Ferguson.

15 Q. Well, you know, I'm not necessarily trying to  
16 be fair. You're a paid witness.

17 You know, you don't remember any comments; is  
18 that correct?

19 A. You're asking me to describe conversations  
20 and specific comments, and I don't have that recall of  
21 specific comments that would be able to answer your  
22 question.

23 Of course there was discussions about what  
24 was going on in Ferguson, but I don't recall  
25 specifically comments that were made about the command

1 of law enforcement in Ferguson.

2 Q. By the way, getting back to a little bit  
3 about your experience, you indicate that you've never  
4 been a line commander in a SWAT or a Tact or a Civil  
5 Disturbance Unit.

6 Have you ever deployed tear gas yourself?

7 A. No.

8 Q. And have you ever deployed Mace, you know,  
9 what people commonly call Mace anyway?

10 A. I don't recall deploying Mace or an aerosol  
11 spray.

12 Q. All right. Did you ever have Mace, you know,  
13 with you as a police officer?

14 A. Yes. In the early '70s aerosol sprays were  
15 introduced as a less lethal weapon to the  
16 Fort Lauderdale Police Department, and I seem to have a  
17 recollection that I was -- went through training and was  
18 assigned an aerosol spray as a less lethal weapon.

19 Q. Do you have any expertise in Mace?

20 A. You would have to describe "expertise".

21 Q. Well, I mean, do you know -- you know, good  
22 point.

23 Have you ever been purposely sprayed with  
24 Mace?

25 Let me ask you that.

1 MR. LATTIMER: Objection as to relevance and  
2 materiality.

3 THE WITNESS: I've been purposely exposed to  
4 CS gas, and I may have been exposed to Mace, but  
5 it's been quite a long time ago, so I don't have  
6 specific recollection of that.

7 BY MR. HUGHES:

8 Q. Well, you know, I've been purposely exposed  
9 to CS gas too in basic training in the United States  
10 Army so, you know, is that when you were exposed?

11 Were you in the military?

12 A. I was not.

13 Q. So you were purposely exposed to CS tear gas  
14 when?

15 A. In the Police Academy, that's where I was  
16 purposely exposed.

17 I was also inadvertently exposed to CS gas in  
18 the middle of a riot on Fort Lauderdale Beach where CS  
19 gas was deployed and my gas mask was not functioning  
20 properly and was exposed to the gas and suffered from  
21 the effects of that exposure.

22 Q. You threw me off.

23 You just said you were in the middle of a  
24 riot in Fort Lauderdale Beach.

25 I know Fort Lauderdale Beach used to be and

1 maybe still is, but not to the extent it once was, a  
2 place for college kids to go on spring break; is that  
3 correct?

4 A. Yes.

5 Q. Was there some sort of disturbance with the  
6 college kids that you were talking about?

7 A. No.

8 Q. When you said middle of a riot on  
9 Fort Lauderdale Beach, tell me about that riot.

10 A. So basically I would describe it as a civil  
11 disturbance on New Year's Eve in the strip area of  
12 Fort Lauderdale Beach where crowds of people were taking  
13 over the streets, blocking traffic, causing damage to  
14 vehicles and property and field force units were  
15 mobilized to respond to that, and I was part of that  
16 response.

17 Q. Did that just last New Year's Eve and that  
18 was it?

19 A. On that occasion, yes.

20 Q. Okay.

21 A. But it also was almost an annual event, and  
22 we had to be prepared for New Year's Eve on our beach  
23 each and every subsequent year.

24 Q. When you say "civil disturbance", was it just  
25 New Year's Eve revelers causing a civil disturbance



1 or what?

2 A. Actually, they were people that were causing  
3 the disturbance on New Year's Eve.

4 I don't know whether they were New Year's Eve  
5 revelers or if they came out with the specific purpose  
6 of causing a disturbance.

7 Q. You said it became an annual event or almost  
8 an annual event and it happened on New Year's Eve; is  
9 that correct?

10 A. Yes.

11 Q. What year?

12 A. This would be in the '70s.

13 Q. Do you know what the cause of the New Year's  
14 Eve event and annular events in the '70s was?

15 A. No.

16 Q. I mean, were people putting up signs saying,  
17 you know, "More beach time," or anything like that?

18 A. No. I think it was just people came out to  
19 the beach and -- to celebrate and there was a -- people  
20 also came out to the beach to cause problems, and as a  
21 result problems were caused, traffic was blocked,  
22 streets were taken over by the people, and the police  
23 responded to that and at different times tear gas was  
24 deployed and --

25 Q. Now, with your department when tear gas was

1 deployed on New Year's Eve, was that just a line officer  
2 that made the decision on his own or is that something  
3 that, you know, there was a specialized unit that was  
4 trained in the use of tear gas and when to use it and  
5 then they had to go up the chain of command before tear  
6 gas was issued or deployed?

7 A. Tear gas would have been deployed at the  
8 direction of a supervisor or command personnel, but  
9 we're also talking 40 years ago, so if you're asking me  
10 for specifics --

11 Q. Okay.

12 A. -- I can't help you.

13 Q. Okay. Do you have any experience as a K9  
14 officer?

15 A. No.

16 Q. Have you ever supervised K9 officers?

17 A. K9 Unit was under my command, but I was not  
18 the direct supervisor --

19 Q. Okay.

20 A. -- of K9.

21 Q. You were not the Sergeant or Lieutenant?

22 A. Correct.

23 Q. Did Fort Lauderdale ever use K9s for crowd  
24 control?

25 A. No.

1 Q. Okay.

2 A. Or at least -- at least not to my knowledge.

3 Q. Fine. But Fort Lauderdale did have K9s; is  
4 that correct?

5 A. Yes. Throughout my entire career, which  
6 started in 1974, we did have K9s, criminal apprehension  
7 K9s.

8 Q. And even though you're no longer a member of  
9 the Fort Lauderdale Police Department, would it be a  
10 fair statement that the police department still has K9s  
11 for criminal apprehension?

12 A. Yes.

13 Q. And what about the Sheriff's Department of  
14 Broward County?

15 A. Yes.

16 Q. Have you ever been Maced yourself?

17 A. I may have been. I just don't recall if I  
18 was Maced as part of training.

19 Q. Well, I'm not comfortable with "may have  
20 been".

21 I think if you've been Maced, you'd remember  
22 it.

23 I mean, I think that's something that hurts.

24 MR. LATTIMER: Objection, argumentative.

25 THE WITNESS: I'm trying to recollect from 30

1 plus years ago if I was exposed to Mace, and  
2 because of memory, I don't want to fill in the  
3 blanks and assume that I was.

4 I do have memories of seeing Mace or OC spray  
5 applied to cotton swabs and Q-tips and wiped under  
6 a person's eyes that they can experience.

7 I just don't recall if that was me or -- or  
8 if I just seen it.

9 BY MR. HUGHES:

10 Q. Okay. Wait. You really threw me for a loop  
11 there.

12 You've seen what, Mace used with a cotton  
13 swabs or Q-tips and then --

14 A. As part of training, yes.

15 Q. Oh, okay. Well, do you know what the best  
16 treatment is for someone who's been Maced?

17 MR. LATTIMER: Objection as to relevance and  
18 materiality.

19 THE WITNESS: Treatment includes flushing of  
20 the eyes and the face with water.

21 BY MR. HUGHES:

22 Q. Tell me -- I mean, that's a little  
23 astonishing to me.

24 Tell me where you learned that.

25 A. I learned it -- I'm aware of that through my

1 years of experience with law enforcement.

2 Q. Really?

3 So if I told you that the best treatment for  
4 Mace is fresh air and time, it will clear up, would you  
5 agree with that?

6 A. I would agree that that would -- would help  
7 and --

8 Q. And --

9 A. And perhaps -- again, we're talking about  
10 Mace and CS gas, and I do recall being -- having eyes  
11 flushed out with exposure to CS gas and I do agree that  
12 fresh air assists with OC spray, but I also believe  
13 flushing of the eyes will be of assistance, as well.

14 Q. Here's a question for you.

15 Have you ever seen what happens to someone  
16 who flushed out their eyes with water, you know, shortly  
17 thereafter?

18 A. Don't recall.

19 Q. Well, I think if you were there and did it or  
20 if you tried to flush out your own eyes, you would  
21 recall, but --

22 MR. LATTIMER: Who said he did?

23 BY MR. HUGHES:

24 Q. But are you aware of anyone teaching you that  
25 the best thing to do if someone's been Mace'd is to flush



1 out the eyes?

2 MR. LATTIMER: Objection, relevance and  
3 materiality.

4 THE WITNESS: Okay. Sitting here right now I  
5 don't recall the specific instruction regarding  
6 decontamination of OC spray.

7 BY MR. HUGHES:

8 Q. Well, here's another question for your  
9 experience.

10 Have you ever used rubber bullets?

11 A. No.

12 Q. Do you even know what rubber bullets are?

13 A. Yes.

14 Q. Do you know any police department that uses  
15 rubber bullets?

16 A. No, but I am aware of police departments that  
17 use projectiles that are made of plastic, and often  
18 times people may confuse those projectiles with rubber  
19 bullets.

20 Q. Here we are in the Fort Lauderdale area,  
21 Florida, but you're testifying about events that took  
22 place in Ferguson, which is in St. Louis County; is that  
23 correct?

24 A. Yes.

25 Q. And tell me what you know about St. Louis

1 County just to make sure I understand.

2 You know, for example, is the City of  
3 St. Louis part of St. Louis County; do you know?

4 MR. LATTIMER: Objection as to relevance and  
5 materiality.

6 THE WITNESS: It is not.

7 BY MR. HUGHES:

8 Q. Do you know that St. Louis County Police  
9 Department would patrol unincorporated areas of  
10 St. Louis County and would also patrol areas where  
11 municipalities do not have their own police department?

12 MR. LATTIMER: Objection as to relevance and  
13 materiality.

14 Mr. Pusins is an expert witness who is here  
15 to testify with regard to the practices and  
16 policies that are to be used by police departments  
17 nationally.

18 It doesn't matter if that police department  
19 is in St. Louis County.

20 It doesn't matter if it's LA County.

21 It doesn't matter if it's New York City.

22 It doesn't matter if it's Washington, D.C.

23 It doesn't matter if it's Duval County in  
24 Florida or Dade County in Florida.

25 His only reason for being here is to talk

1 about the policies and procedures consistent with  
2 his report, and he has not offered any opinions  
3 regarding the geography of Missouri, nor where  
4 people are going to --

5 MR. HUGHES: How about if I --

6 MR. LATTIMER: Let me finish. Let me finish.  
7 Don't do that.

8 Nor has he been engaged to testify as to  
9 where police may or may not patrol.

10 So this is an expert deposition. This has to  
11 do with policies, procedures and opinions.

12 He's giving the opinions that he's going to  
13 offer.

14 He's not going to offer any opinions about  
15 geography.

16 He's not going to offer any opinions about  
17 the stuff you're talking about now.

18 MR. PLUNKERT: Then just make it a continuing  
19 objection.

20 MR. HUGHES: Yeah, you can make a continuing  
21 objection.

22 MR. LATTIMER: You know that's not going to  
23 work. Wait.

24 There's no need in going back and forth with  
25 me about this because you know that's not going to

1 work.

2 Let's just move on, and let's try to keep the  
3 deposition about what we're talking about and not  
4 these extraneous issues that aren't going to be a  
5 part of his testimony, nor am I going to offer  
6 them, nor has he been engaged to testify about  
7 them.

8 BY MR. HUGHES:

9 Q. Would you like to answer the question?

10 A. Could you repeat the question?

11 MR. HUGHES: Would you read back the  
12 question, please?

13 (Thereupon, the requested question was read  
14 back.)

15 THE WITNESS: Yes.

16 BY MR. HUGHES:

17 Q. On Page 1 of your report, among other things,  
18 in the first paragraph you indicated that you were asked  
19 to formulate opinions on whether probable cause to  
20 arrest occurred and whether force was applied in an  
21 objectively reasonable manner; is that correct?

22 A. I don't think that's what it says.

23 Q. Well, I mean, you were asked to address some  
24 issues, and at least two of the issues that you were  
25 asked to address were whether probable cause -- whether

1 or not there was probable cause to arrest and whether or  
2 not force was applied in an objectively reasonable  
3 manner.

4 Is that a fair statement?

5 MR. LATTIMER: That misstates the report.

6 BY MR. HUGHES:

7 Q. Okay.

8 MR. LATTIMER: Objection.

9 BY MR. HUGHES:

10 Q. Is that --

11 A. No.

12 Q. Well, so you were not asked to determine  
13 whether or not probable cause to arrest and you were not  
14 asked to determine whether or not force was applied in  
15 an objectively reasonable manner?

16 A. What my report says was that I was asked to  
17 formulate an opinion as to whether officers acted in  
18 accordance with widely accepted police practices,  
19 whether probable cause to arrest was articulated and  
20 documented and was force applied in an objectively  
21 reasonable manner.

22 Q. Oh, okay. So you're not going to give any  
23 opinions on whether or not there was probable cause to  
24 arrest?

25 A. If I'm asked -- if you ask me if there was

1       probable cause, I'll offer that opinion.

2           Q.     Okay.

3           A.     But that's what it says.

4           Q.     And you're not going to offer any opinions on  
5 whether or not force was applied in an objectively  
6 reasonable manner?

7           A.     No, I will.

8           Q.     Hmm?

9           A.     I'm -- I will offer that opinion.

10          Q.     Well, in your report you never went into  
11 detail with any of the individual Plaintiffs on whether  
12 or not there was probable cause to arrest and whether or  
13 not probable cause -- and whether or not force was  
14 applied in an objectively reasonable manner.

15          A.     What my report says --

16          Q.     Is that correct, you did not list that in  
17 your report?

18               MR. LATTIMER: List what?

19 BY MR. HUGHES:

20          Q.     As to, let's say, Tracey White, as to Nathan  
21 Burns, as to different people, you did not say in this  
22 case there was not probable cause to arrest, in this  
23 case force was not objectively reasonable?

24          A.     What I'm saying is that the probable cause  
25 and whether force was applied in an objectively



1 reasonable manner was not articulated by the police  
2 officers. That's what I'm saying.

3 Q. Okay.

4 A. So when I reviewed the documents and I  
5 reviewed the statements of the Plaintiffs and I reviewed  
6 the police reports that were completed by Detective  
7 Menzenwerth and when I reviewed the depositions, I  
8 realized that the officers who made the arrests and who  
9 applied the force never documented the probable cause,  
10 never documented the use of force.

11 And what I'm saying is that the failure to  
12 document both the probable cause and the use of force is  
13 not consistent with widely accepted practices.

14 Q. You've read each and every report; is that  
15 correct?

16 A. Yes.

17 Q. Would you agree that each and every report  
18 where someone was arrested contains the reasons for the  
19 arrest?

20 A. It contains information about the arrest.

21 I would not agree that it contains probable  
22 cause to make the arrests.

23 Q. Would you agree that each and every police  
24 report documents, you know, the probable cause for  
25 arrest and the use of force --

1 MR. LATTIMER: Objection, asked and  
2 answered.

3 BY MR. HUGHES:

4 Q. -- if force was used?

5 A. No.

6 Q. First of all, do you know how many Plaintiffs  
7 had force used against them by the St. Louis County  
8 police officers?

9 A. Not totally.

10 Q. Can you give me the names of any Plaintiff  
11 who had force used against him by St. Louis County?

12 MR. LATTIMER: Are you asking him about  
13 St. Louis County as opposed to other police  
14 departments?

15 MR. HUGHES: Yes.

16 MR. LATTIMER: Okay. I'll object to  
17 relevance and materiality, but --

18 THE WITNESS: It's going to take a while, so  
19 what we may want to do is take a break and I'll be  
20 glad to --

21 BY MR. HUGHES:

22 Q. Well, okay.

23 A. Because I'm going to have to look at my --

24 Q. Let's do it this way. I'll move on.

25 A. Okay.

1 Q. I'll start talking about some individual  
2 Plaintiffs.

3 So without looking at your notes and reports,  
4 you cannot tell me, first of all, off the top of your  
5 head which Plaintiffs were arrested by St. Louis County  
6 officers and which Plaintiffs had force used against  
7 them by St. Louis County officers, is that correct, just  
8 off the top of your head?

9 A. No.

10 MR. LATTIMER: Objection as to relevance and  
11 materiality. Nor can I.

12 THE WITNESS: No.

13 BY MR. HUGHES:

14 Q. So --

15 A. I'm not agreeing with you.

16 Q. Okay. So you do know it off the top of your  
17 head?

18 A. I know people who have been arrested. I know  
19 people who have been arrested by St. Louis County, but  
20 I'm not going to guess.

21 And when we have the number of Plaintiffs  
22 that we have and the number of police agencies that are  
23 involved, I'm going to refer to my notes to make sure  
24 I'm giving an accurate --

25 Q. Okay.

1 A. -- reflection of my review.

2 Q. Let's talk about Tracey White and William  
3 Davis.

4 You would agree that their arrest was on  
5 Wednesday, August 13th, 2014?

6 A. Yes.

7 Q. And I guess one time that I have is about  
8 7:30 p.m.; is that relatively accurate in your mind?

9 A. I'm seeing 15:30 on the police report.

10 Q. Oh, okay. So you've read the police  
11 report --

12 A. Yes.

13 Q. -- is that correct?

14 You've read the depositions of Tracey White  
15 and William Davis?

16 A. Yes.

17 Q. You've read the depositions of the Detectives  
18 and Sergeants involved?

19 A. Yes.

20 Q. You know the Neighborhood Enforcement Team  
21 was helping with the skirmish line?

22 A. Yes.

23 Q. You know the crowd was told to move up the  
24 street and they did?

25 A. Yes.

1 Q. And two of the people who moved up the street  
2 were Tracey White and William Davis?

3 A. Yes.

4 Q. And once they moved up the street, did you  
5 know there was a problem with a truck that had a trailer  
6 that got stuck at a fence?

7 A. Yes.

8 Q. And you're aware the police were trying to  
9 help that truck driver to get out?

10 A. Yes.

11 Q. And you're aware it sort of became an event  
12 in itself and the crowd was told to move away from the  
13 truck?

14 MR. LATTIMER: Objection, relevance and  
15 materiality, misstates the evidence, and there are  
16 no facts to support what you're saying.

17 THE WITNESS: I'm aware that the police were  
18 trying to assist the vehicle from being caught in  
19 that predicament and to allow the vehicle to move  
20 on and that they were dealing with the crowd at the  
21 same time.

22 BY MR. HUGHES:

23 Q. And so the police did tell the crowd to move  
24 away from that area where the truck was in that  
25 predicament, the truck and trailer?

1 MR. LATTIMER: Objection. There's nobody who  
2 says that in this case.

3 THE WITNESS: I don't recall reading that the  
4 police made those specific instructions. Perhaps  
5 they did. I don't know.

6 BY MR. HUGHES:

7 Q. Well, you recall that Tracey White and  
8 William Davis were told to move and they were given two  
9 areas to move; one was a parking lot and one was a  
10 street? Do you recall that?

11 A. I recall that they were told to move, yes.

12 Q. And do you recall they were given, you know,  
13 a couple areas where they could move?

14 MR. LATTIMER: Objection. There's nothing in  
15 this case that says that.

16 THE WITNESS: I recall reading in some  
17 depositions that they were directed to a particular  
18 area.

19 I don't recall whether it was a parking lot  
20 or what it was, to allow for Mrs. White's husband  
21 to come collect her.

22 BY MR. HUGHES:

23 Q. Okay. And then you're aware that they did  
24 not move?

25 MR. LATTIMER: Objection as to relevance and

1 materiality, misstates the evidence.

2 BY MR. HUGHES:

3 Q. You're aware they did not go to that area  
4 that you just said, a parking lot or whatever?

5 MR. LATTIMER: What parking lot are you  
6 talking about?

7 THE WITNESS: I recall testimony that they  
8 were directed to a street further on where the  
9 husband of Tracey White can come and collect her.

10 BY MR. HUGHES:

11 Q. And you --

12 A. I don't remember a parking lot --

13 Q. Okay.

14 A. -- or anything else.

15 Q. That's fine. But they did not go to that  
16 street?

17 A. No.

18 Q. And can you tell me how many times you  
19 remember she was told to leave to go to that street?

20 A. No.

21 Q. More than once?

22 A. I wouldn't argue that.

23 Q. Okay. And do you recall the number of times  
24 that William Davis was told to leave to go down to that  
25 street?



1 A. No.

2 Q. More than once?

3 A. I wouldn't argue that either.

4 Q. Do you recall if Mr. Davis was told that if  
5 he, you know -- that after being told more than once  
6 that if he didn't go down to that street, he would have  
7 to be arrested?

8 MR. LATTIMER: Objection. There was never  
9 anybody who testified in this case to any such  
10 thing.

11 MR. HUGHES: Sure, he did. Terrence McCoy  
12 did, but go on.

13 THE WITNESS: I don't recall. What I do  
14 recall, though, was that the reports that you're  
15 talking about from Menzenwerth were completed up to  
16 eight months after this event and nothing was  
17 completed contemporaneously with the event.

18 So when I look at reports that were completed  
19 by somebody that was not there through an  
20 investigation, I have to question the -- the  
21 thoroughness of those statements and the accuracy  
22 of those statements.

23 BY MR. HUGHES:

24 Q. Well, you know, I don't think I talked about  
25 Menzenwerth's report, but I guess -- so you've read the

1 report.

2 I also asked you if you read the depositions  
3 of all the police officers and whether you read the  
4 depositions of Tracey White and William Davis.

5 A. Yes.

6 Q. So you've read all those?

7 A. Yes.

8 Q. So have I said anything that was different  
9 from what was in those depositions, as well as the  
10 report?

11 A. That they were -- can you repeat what you  
12 said?

13 If you're talking about giving direction and  
14 asking them to move, I would agree with that.

15 Q. Okay.

16 A. And I did agree with that.

17 Q. So looking at the totality of facts, you  
18 know, what you've agreed to, that there was unrest, the  
19 crowd was told to go up the street, they did, and then  
20 they were told to -- then you have this truck and  
21 trailer stuck and it's in a predicament and then the  
22 crowd was told to go down the street and then Tracey  
23 White didn't and William Davis didn't.

24 Now, looking at the totality of facts based  
25 on reasonable, trustworthy information, would a prudent

1 police officer believe that Tracey White and William  
2 Davis had committed some offense when they refused to  
3 obey the directions of the police officers?

4 MR. LATTIMER: Are you asking him to assume  
5 those facts?

6 MR. HUGHES: My question stands for itself.

7 MR. LATTIMER: No, it can't, because he's an  
8 expert and you have to ask him -- if you're asking  
9 him to assume certain facts, that's one thing.

10 If you're telling him that those are the  
11 facts, that's something else.

12 Are you asking him to assume those facts?

13 MR. HUGHES: We've gone through the facts.

14 MR. LATTIMER: No. You've gone through your  
15 facts.

16 MR. HUGHES: We've gone through the facts.  
17 He's read the facts. He's agreed with them.

18 MR. LATTIMER: No, he hasn't.

19 MR. HUGHES: Yes, he has.

20 MR. LATTIMER: Are you asking him to assume  
21 that those are the facts?

22 MR. HUGHES: Look, I'm paying for this  
23 deposition, so why don't you make a legal objection  
24 if you want to make a legal objection and then let  
25 him answer the question.

1 MR. LATTIMER: One more time, are you asking  
2 him to assume those facts?

3 MR. HUGHES: Assume those facts that he  
4 agreed to, yeah.

5 MR. LATTIMER: Okay. Assuming those facts.  
6 All right.

7 THE WITNESS: Is there a question?

8 BY MR. HUGHES:

9 Q. Yeah.

10 MR. LATTIMER: He wants you to assume those  
11 facts, and based upon those facts, was there  
12 probable cause for a reasonably prudent police  
13 officer to make an arrest for any offense? That's  
14 what he said.

15 MR. HUGHES: Would you please read back the  
16 question?

17 (Thereupon, the requested question was read  
18 back.)

19 THE WITNESS: Okay. I would have to start my  
20 answer with --

21 BY MR. HUGHES:

22 Q. Well, excuse me. You need to answer --

23 MR. LATTIMER: You cannot tell him how to  
24 answer a question. You cannot tell him how to  
25 answer a question. You cannot tell him how to

1 answer a question.

2 Now, either you accept his answer --

3 MR. HUGHES: I'm not going to tell him --

4 MR. LATTIMER: Okay. But you can't direct  
5 him. You can't do anything.

6 You asked a question. If you want an answer,  
7 let him answer and then you follow up, but you're  
8 not going to tell him how to answer questions.

9 That's not going to happen.

10 BY MR. HUGHES:

11 Q. At the beginning of the deposition I asked  
12 you if a question called for a yes or no, you answer  
13 yes or no, and then if you want to expand upon it, you  
14 can.

15 MR. LATTIMER: And I told you at the  
16 beginning of the deposition that he would not do  
17 that and no witness that I --

18 MR. HUGHES: First of all --

19 MR. LATTIMER: No witness --

20 MR. HUGHES: For the record, would you stop  
21 yelling?

22 MR. LATTIMER: I'm not yelling.

23 MR. HUGHES: Yes, you are.

24 MR. LATTIMER: No witness --

25 MR. HUGHES: You're yelling. You're raising

1           your voice, like you always do.

2           MR. LATTIMER: Just like you.

3           MR. HUGHES: No.

4           MR. LATTIMER: No witness is going to answer  
5 a question based upon how you tell them to answer a  
6 question, not one that I'm associated with.

7           So if you want an answer --

8           MR. HUGHES: No.

9           MR. LATTIMER: If you want an answer --

10          MR. HUGHES: Are you advising an expert  
11 witness not to answer a question?

12          MR. LATTIMER: No. I'm telling you he's  
13 going to answer the question, but he's not going to  
14 answer the way you want him to answer it.

15          I'm telling him to answer the question and  
16 I'm telling you to let him answer the question.

17          MR. HUGHES: Just so that I understand, are  
18 you telling him how to answer the question?

19          MR. LATTIMER: No. I'm telling him not to  
20 let you tell him how to answer the question.

21          Don't try to flip the script.

22          You're the one trying to tell him how to  
23 answer the question.

24          MR. HUGHES: Obviously you're trying to tell  
25 him how to answer the question.

1 MR. LATTIMER: No. I'm trying to tell him to  
2 answer the question.

3 MR. HUGHES: You're not making a legal  
4 objection.

5 MR. PLUNKERT: Gentlemen, gentlemen, stop.  
6 Just let the man answer the question.

7 MR. LATTIMER: Thank you.

8 BY MR. HUGHES:

9 Q. Would you like the question repeated?

10 A. Yes.

11 (Thereupon, the requested question was read  
12 back.)

13 THE WITNESS: I can't tell you -- answer that  
14 question because part of your qualification was  
15 that it's based on reasonable and trustworthy  
16 information, and I would offer that a police report  
17 that was generated eight months later is not  
18 reasonable and trustworthy information.

19 I would also look at the deposition of  
20 Detective Menzenwerth, who clearly indicated that  
21 he had to fresh the memory of the officers as to  
22 what happened. He refreshed the memory of every  
23 officer that he spoke to.

24 So your qualification that it was reasonable  
25 and trustworthy I do not agree with.



1 BY MR. HUGHES:

2 Q. Let me ask you --

3 A. And at that point I'm going to ask that we  
4 take a break.

5 Q. If you want to take a break, that's fine.  
6 How long of a break do you want?

7 A. Five minutes.

8 MR. HUGHES: Fine.

9 (Thereupon, a recess was taken at 10:53 a.m.,  
10 after which the deposition continued at 11:00  
11 a.m.)

12 BY MR. HUGHES:

13 Q. I guess we're back on the record.

14 Oh, by the way, I could hear you talking  
15 outside.

16 You were talking to Mr. Lattimer during the  
17 break?

18 A. Yes.

19 Q. What were you talking about?

20 A. He was talking about your method of  
21 questioning.

22 Q. What did he say?

23 A. I --

24 Q. I heard you talking most of the time and  
25 usually he talks very loud. I didn't hear him.

1 A. But you heard me?

2 Q. I heard you, so --

3 A. I remember him saying --

4 Q. Every time he's talked in this room he's  
5 raised his voice, but when he's talking to you, I could  
6 not hear him at all, so what did he say?

7 A. He talked about your questioning and that you  
8 try to slide in facts that may not be in evidence and  
9 he's not going to allow you to do it and he's going to  
10 object.

11 Q. And I heard you talking mostly, and what did  
12 you say?

13 MR. LATTIMER: Well, if you heard him, why  
14 are you asking him what he said?

15 THE WITNESS: I don't recall what I said.

16 BY MR. HUGHES:

17 Q. All right. You know, I used this term  
18 reasonably trustworthy information only because that's  
19 what you wrote on Page 11 of your report.

20 So I'll just leave out what you said in your  
21 Page 11.

22 Would you agree that a police officer on the  
23 scene with the facts that you agreed to, for example,  
24 that there was police concern because of disturbance,  
25 the police -- the people were asked to go up the street,

1 people did, including Tracey White and William Davis,  
2 and then once up the street there was a truck with a  
3 trailer that was in a predicament, I think is the words  
4 you used, and then the police were trying to help that  
5 truck in the predicament and they told people in the  
6 crowd, including Tracey White and William Davis, to go  
7 to a street down the street, and Tracey White and  
8 William Davis did not after being asked to do so more  
9 than once.

10 So my question to you is would you agree that  
11 there is arguable probable cause for the police officer  
12 right there on the street to believe that these  
13 individuals had committed some type of an offense?

14 MR. LATTIMER: Objection. You keep saying  
15 that he agreed to something, which he did not do,  
16 but based upon assuming those facts, you can answer  
17 the question to the best that you can.

18 THE WITNESS: It's such a convoluted question  
19 and --

20 BY MR. HUGHES:

21 Q. The question narrows down -- I tried to  
22 refresh your memory on the facts that I believe you  
23 agreed to, but Mr. Lattimer wants me to say assume  
24 those facts to be true, so the question is not  
25 convoluted.

1           It's wouldn't you agree there is arguable  
2       probable cause to believe that they had committed some  
3       offense?

4           A.     No.

5           Q.     So are you saying that people or police  
6       officers in Broward County and Fort Lauderdale don't  
7       arrest people for failure to obey reasonable orders of a  
8       police officer or interfering with a police officer?

9           MR. LATTIMER: Objection. There's no such  
10       crime as failure to obey a lawful order.

11          THE WITNESS: I imagine -- I would have to  
12       imagine that we do arrest people.

13       BY MR. HUGHES:

14          Q.     Okay.

15          A.     But when we talk about the totality of  
16       circumstances in this case and you have Tracey White and  
17       her son who were in the McDonald's and ordered, not  
18       asked, ordered to leave the McDonald's, ordered to  
19       travel up a street, ordered to go to another location  
20       and she's trying to find a way that she can be with her  
21       husband and find a location where she can locate --  
22       where he can locate her, I don't know that it's  
23       reasonable to assume that she committed a crime when  
24       she's ordered to do something that -- I don't know that  
25       that's reasonable.

1 She doesn't have any choice.

2 She was pushed into this crowd, and when she  
3 was initially arrested, she was initially charged with  
4 failure to disperse, and I don't believe there was  
5 probable cause that she violated the -- the crime of  
6 failure to disperse.

7 Q. You say she was charged with failure to  
8 disperse based upon what?

9 A. Based upon the booking form that I read.

10 Q. So you're not basing that based upon the  
11 deposition testimony of the officers or the police  
12 report; is that correct?

13 A. She was initially charged with failure to  
14 disperse. Then --

15 Q. You're just saying the booking form at the  
16 Justice Center in St. Louis County listed that charge as  
17 failure to disperse?

18 A. Yes. Let me rephrase that.

19 Q. Okay.

20 A. When I look at the booking form for Tracey  
21 White and her son, the booking form indicates they were  
22 both charged with failure to disperse.

23 There was not probable cause at the time to  
24 charge them with failure to disperse.

25 Q. Okay. Well --

1           A.     I'm not finished.

2           Q.     Okay.

3           A.     Then we have Menzenwerth who comes in  
4     sometime later, reviews booking forms, reviews arrests,  
5     gathers facts, interviews police officers, has to  
6     refresh their memory as to what happened, and then he  
7     eventually has the charge changed or the charge is  
8     eventually changed from failure to disperse to  
9     interfering.

10                I don't find that credible or trustworthy.

11           Q.     All right.

12           A.     And that's the whole thrust of my position  
13     with this case, is that you have police officers who  
14     made arrests who never documented or articulated in any  
15     fashion in a written form the probable cause that they  
16     used to make the arrest.

17                Later, eight months later you have  
18     Menzenwerth producing police reports after his  
19     investigation, and I'm saying that is not trustworthy,  
20     that is not credible, and it falls below the standards  
21     of care and widely accepted police practices regarding  
22     arrests.

23           Q.     I don't think you listened to my question.

24                I'll get to that, but before I do, I just  
25     thought of something.

1 Have you ever taught in your experience like  
2 a teacher at the Police Academy?

3 A. No.

4 Q. Have you ever been a teacher for continuing  
5 education of police officers?

6 A. No.

7 Q. Okay. So you've never been a teacher at  
8 all?

9 A. I've been a teacher in law enforcement for 40  
10 years in that I -- as a detective, as a supervisor, as a  
11 commander we're teaching people every single day.

12 Q. But not as a classroom instructor?

13 A. Correct.

14 Q. All right. And my question was -- I did not  
15 ask you was there probable cause to believe that they  
16 committed the crime of failure to disperse.

17 My question was was there arguable probable  
18 cause that they committed some offense?

19 A. Not to my knowledge.

20 Q. So when police officers on the scene in  
21 Ferguson, when there's a situation with this truck, when  
22 the police officers on the scene told them to go down  
23 the street and they refused to do so, you're saying,  
24 just so I understand and, you know, so people can read  
25 your deposition, other police officers, arguable



1 probable cause that -- there was no arguable probable  
2 cause that she, Tracey White, or he, William Davis,  
3 committed some offense?

4 MR. LATTIMER: Objection. He's already  
5 answered the question and --

6 MR. HUGHES: Okay.

7 MR. LATTIMER: -- we do take offense with you  
8 trying to intimidate the Witness by telling him  
9 that you're going to show his deposition to other  
10 police officers.

11 MR. HUGHES: I'm not going to show --

12 MR. LATTIMER: Let me finish. Let me  
13 finish.

14 I think that is highly, highly  
15 unprofessional for you to suggest to this man that  
16 he ought to be mindful of his answer because his  
17 deposition is going to be read by other law  
18 enforcement officers.

19 MR. HUGHES: If someone was in a teaching  
20 capacity.

21 BY MR. HUGHES:

22 Q. Go on. So anyway, you heard the question.  
23 Do you want the question repeated or not?

24 A. I believe the thrust of your question was was  
25 there probable cause to arrest them for any offense, and

any offense is open-ended.

I'm not hearing probable cause to arrest them and you're saying "any offense".

I don't know what you're talking about by "any offense".

Q. Well, you know, interfering with an officer, not obeying lawful commands of a police officer.

You might be able to think of some other offenses, but was there arguable probable cause that they committed those offenses or some other offense?

A. In my mind, no.

Q. Okay. You just mentioned inside McDonald's and, boy, I didn't even mention that, but as long as you did, I will.

In your --

MR. LATTIMER: We know. That was the point.

BY MR. HUGHES:

Q. In your report you indicated you read the Complaint and the Third Amended Complaint; is that correct?

A. Yes.

Q. And you're aware that the allegations made by Tracey White and William Davis in their Complaint and their Third Amended Complaint are not true?

MR. LATTIMER: Objection as to relevance and

1 materiality.

2 THE WITNESS: Can you be specific? If you're  
3 talking about the allegations --

4 BY MR. HUGHES:

5 Q. Well, first of all, Paragraph 41, I know you  
6 read her deposition. You said so.

7 It said on August 13th, 2014 they were  
8 attending a Peace and Love Rally that was sponsored by  
9 her AME Church group.

10 You're aware that's not true, it was not her  
11 AME Church group?

12 MR. LATTIMER: Objection as to relevance and  
13 materiality.

14 THE WITNESS: I don't argue that.

15 BY MR. HUGHES:

16 Q. And it says that inside the McDonald's Ryan,  
17 McCoy, McCann and Cosma appeared in Army uniforms  
18 carrying rifle sticks and wearing helmets and they  
19 ordered White to get out.

20 You're aware that's not true from reading her  
21 deposition and reading Mr. Davis' deposition?

22 MR. LATTIMER: Objection as to relevance and  
23 materiality and misstates the facts. That's  
24 absolutely true.

25 MR. PLUNKERT: You may answer.

1 THE WITNESS: I recall Tracey White being in  
2 a McDonald's and being ordered to leave, and then  
3 she went outside, had a conversation with Sergeant  
4 Ryan and wanted to reenter and she was not able  
5 to.

6 BY MR. HUGHES:

7 Q. You don't recall her testifying that she  
8 stepped outside on her own because of her cell phone  
9 and --

10 A. Yeah, she may have stepped out.

11 Q. She was never ordered to leave?

12 A. But then she could not reenter but then she  
13 was ordered to leave the McDonald's property and to go  
14 up the street.

15 Q. And it's alleged that after her son exited  
16 the restroom, Plaintiff White was thrown to the ground  
17 and handcuffed, and then during the process of being  
18 arrested, Plaintiff White realized her son's iPad was in  
19 her hand and summoned her son to retrieve the item, and  
20 when he did, a police officer named McCoy placed the  
21 minor under arrest.

22 You agree that that's completely untrue?

23 MR. LATTIMER: Objection as to relevance and  
24 materiality.

25 THE WITNESS: Yes.

1 BY MR. HUGHES:

2 Q. Now, are you going to render any opinions  
3 regarding the force used against Tracey White?

4 A. No.

5 Q. So there was no excessive force by St. Louis  
6 County against Tracey White; is that correct?

7 MR. LATTIMER: Objection. That's not what he  
8 testified to.

9 BY MR. HUGHES:

10 Q. Is that correct?

11 A. I'm trying to recall Tracey White's  
12 testimony.

13 I know that police officers claim there was  
14 no excessive force, and I believe Tracey White may have  
15 said that her arms were pulled and she may have been  
16 dragged, but I don't recall specifically an issue with  
17 excessive force.

18 Q. Well, see, I only have one chance to take  
19 your deposition, and based on your 18-page report, you  
20 didn't say anything about her specific arrest or any  
21 force in your report, but you said, well, you know, if I  
22 ask that, I'll render opinions.

23 So I'm at a loss.

24 Now, you're saying you can't remember off the  
25 top of your head.

1           You should have put it in your report if  
2           you're going to testify to that.

3           So my question to you right now, are you  
4           going to be rendering any opinions at trial that there  
5           was excessive force used against Tracey White by the  
6           St. Louis County police officers?

7           A.     If I'm asked about that, I will respond to  
8           it.

9           Q.     What is the opinion that you'll be giving?

10          A.     It depends on the question. As of today --

11          Q.     Well, was there excessive force in the  
12          constitutional sense used against Tracey White by  
13          St. Louis County police officers?

14          A.     I'm not aware of any.

15          Q.     Okay. What about William Davis? Yeah,  
16          William Davis.

17          A.     I'm not aware of any.

18          Q.     All right. By the way, before I get off the  
19          subject of William Davis and Tracey White, Mr. Plunkert  
20          was going to ask you this, but I'll just ask you,  
21          neither one of them were arrested by or touched by  
22          someone named Officer Cosma; isn't that correct?

23          A.     There's no indication that she was, no.

24          Q.     Right. So you're not going to be rendering  
25          any opinions with regard to Tracey White or William

1 Davis regarding Officer Cosma; is that correct?

2 A. Correct.

3 Q. All right. Let's talk about Dwayne Matthews.

4 That also was August 13th -- well, you know,  
5 actually, before we go to August 13th, you mentioned  
6 Michael Brown was killed on August 9th; is that  
7 correct?

8 A. Yes.

9 MR. LATTIMER: No. He indicated Michael  
10 Brown was killed.

11 BY MR. HUGHES:

12 Q. Okay. He was killed. Do you know what date  
13 that was?

14 A. August 9th.

15 Q. And did unrest begin that day?

16 A. No.

17 Q. Well, did it begin the 10th?

18 A. I believe it began the 10th.

19 Q. And I mean, you read the COPS Report. You  
20 read the After-Action Report.

21 I guess you watched -- what national news  
22 media do you watch, by the way?

23 A. Various.

24 Q. Well, what's your channel of choice if  
25 there's a civil unrest going on somewhere?



1 MR. LATTIMER: Objection as to relevance and  
2 materiality.

3 THE WITNESS: I don't have a channel of  
4 choice. I'll be surfing to look to see what's  
5 being projected on the screen, and if it catches my  
6 interest, I'll stop and listen and watch.

7 BY MR. HUGHES:

8 Q. So I mean, for Ferguson rioting did you turn  
9 on MSNBC, Fox News, CNN?

10 Is there any particular station of choice  
11 that you watch? Al Jazeera?

12 A. No.

13 Q. All right.

14 A. But back to your question about when did the  
15 civil disturbances start, there was disturbances that  
16 were in effect during the processing of the crime scene  
17 on the 9th, so --

18 Q. Thank you.

19 A. -- there were people that were there.

20 Q. You did a little reading then. Okay.

21 And do you know what sort of code was issued  
22 on the 9th?

23 A. I'm not sure if the code was -- there was a  
24 code 1000 and then a code 2000.

25 I don't recall exactly what day those codes

1       were issued.

2                   They could have been issued on the 9th or  
3       also on the 10th.

4       Q.       You said there's some disturbance on the  
5       9th.

6                   Let's go on to the 10th. Would you tell me  
7       what you read about that?

8                   And I guess without putting words in your  
9       mouth, would you recall there was significant rioting,  
10      looting, burning, anything --

11      A.       Yes.

12      Q.       -- going on?

13      A.       Yes.

14      Q.       That was on the 10th?

15      A.       Yes.

16      Q.       What about the 11th?

17      A.       Yes.

18      Q.       12th?

19      A.       Yes.

20      Q.       13th?

21      A.       Yes.

22      Q.       Going back to Dwayne Matthews, Wednesday,  
23      August 13th, there had been a few days of -- well, you  
24      just agreed to significant rioting and then that night  
25      there's looting, I think a building got burned down;

1 would you agree with that --

2 MR. LATTIMER: Objection --

3 BY MR. HUGHES:

4 Q. -- or not?

5 MR. LATTIMER: -- relevance and materiality,  
6 misstates the facts.

7 THE WITNESS: Yes.

8 BY MR. HUGHES:

9 Q. And then Dwayne Matthews is in the area of  
10 West Florissant and Highmont?

11 A. Yes.

12 Q. There was a crowd, a large crowd, unruly  
13 crowd; would you agree?

14 MR. LATTIMER: You're asking him if he was  
15 there?

16 MR. HUGHES: No. I'm asking him what he's  
17 read. He's got lots of notes, lots of reports,  
18 lots of depositions.

19 THE WITNESS: Yes.

20 BY MR. HUGHES:

21 Q. And would you agree rocks and bottles were  
22 being thrown at police?

23 A. Apparently.

24 Q. Gunshots could be heard?

25 A. Yes.

1 Q. A Molotov cocktail was thrown on a roof  
2 nearby West Florissant and Highmont?

3 A. That was reported, yes.

4 Q. All right. The crowd was ordered to  
5 disperse?

6 A. Probably.

7 Q. Tear gas was deployed?

8 A. Yes.

9 Q. Will you agree there's probably significant  
10 tear gas deployed?

11 MR. LATTIMER: Objection. He couldn't  
12 possibly know that.

13 THE WITNESS: I would say that tear gas was  
14 deployed.

15 I don't know whether it was -- how you would  
16 define "significant".

17 BY MR. HUGHES:

18 Q. All right. Fair enough.

19 So tear gas deployed, crowd is dispersing.  
20 You know that from what you've read; is that correct?

21 A. Yes.

22 Q. And you know there's a police skirmish  
23 line?

24 A. Yes.

25 Q. And in front of the skirmish line there's

1 tear gas?

2 A. There's tear gas all over.

3 Q. And then one person comes -- let's go back a  
4 little bit further.

5 The street there in Highmont is a dark  
6 street; would you agree with that?

7 MR. LATTIMER: How could he possibly know  
8 that?

9 BY MR. HUGHES:

10 Q. From what you read?

11 MR. LATTIMER: Objection.

12 BY MR. HUGHES:

13 Q. You either agree or you don't agree.

14 A. I don't know whether it was dark or not. It  
15 happened at night.

16 I'm not sure what kind of illumination may  
17 have been there.

18 Q. A person coming toward the police skirmish  
19 line, running on a street which may or may not have been  
20 dark, coming through the tear gas, coming through  
21 smoke -- will you agree that smoke was deployed from  
22 what you read?

23 A. Yes.

24 Q. And although the rest of the crowd is  
25 dispersing, although a crowd is dispersing, one person

1 is coming towards the police in a skirmish line through  
2 the smoke, through the tear gas, running at the police  
3 skirmish line, his hands may be up, may or may not be  
4 up, but he says his hands are up and something's in his  
5 right hand.

6 Now, if you were hired by the police  
7 department to do some classroom teaching or if you were  
8 an on-the-line commander, which you never were, but  
9 would you advise your officers to yell at him to, "Go  
10 back, go back"?

11 Yes or no?

12 MR. LATTIMER: Objection, calls for the  
13 Witness to assume facts not in evidence.

14 MR. HUGHES: Oh, there's plenty. That's in  
15 evidence all over the place, but go on.

16 MR. LATTIMER: He doesn't testify that he was  
17 running and you know it.

18 He testified he got off a bus and he was  
19 walking towards the police.

20 BY MR. HUGHES:

21 Q. Okay. I'll say a person is coming towards a  
22 police line on a street that may or may not have been  
23 dark, coming through smoke, coming through tear gas with  
24 his hands up, maybe with his hands up, and if so, he has  
25 something in his hand, but he's coming at the police

1 skirmish line.

2 My question was if you were an on-line  
3 commander, you'd have to speculate since you never were  
4 in this situation, or if you were an instructor, would  
5 you believe it is good advice to have officers yell at  
6 him to go back?

7 A. Not necessarily.

8 Q. If you don't yell at him to go back, what  
9 would you advise your officers to do?

10 MR. LATTIMER: Objection as to relevance and  
11 materiality.

12 THE WITNESS: Attempt to assess the intent of  
13 the person.

14 As you said, he was walking towards the  
15 police. He had his hands up.

16 There may have been an issue that he needed  
17 to communicate to the officers.

18 You have to assess what's going on and not  
19 just make an assumption that you have to turn him  
20 around. You don't know why he's coming towards  
21 you.

22 BY MR. HUGHES:

23 Q. But you know there's been a few days of  
24 significant rioting; is that correct?

25 A. Yes.

1 Q. Burning, looting, throwing things at police?

2 A. Yes.

3 Q. And you have the crowd dispersing but one  
4 person doesn't coming towards the police, and you know  
5 at least from the testimony of the police officers that  
6 they were yelling at him to go back, and one detective,  
7 Joe Patterson, even removed his gas mask, exposed  
8 himself to tear gas and yelled at him to, "Go back, go  
9 back"?

10 MR. LATTIMER: Objection, misstates the  
11 facts.

12 What he said was, "Get on the ground."

13 Nobody told him to get back and you know  
14 this.

15 MR. HUGHES: No.

16 MR. LATTIMER: It's not the facts in this  
17 case.

18 MR. HUGHES: It's certainly --

19 MR. LATTIMER: But if you can assume that  
20 fact and answer that question, please do.

21 Stop misstating the facts in the case.

22 MR. HUGHES: I'm not misstating the facts.

23 BY MR. HUGHES:

24 Q. You've read the deposition of Joe Patterson,  
25 so despite what Mr. Lattimer's trying to tell you to



1 plant in your mind now, you've read those, and if you  
2 think I just said something to you that was not  
3 accurate, if you think Joe Patterson said something  
4 different, you can correct me. Okay?

5 If you think the other officer said something  
6 different, you can correct me.

7 So, you know, did you read that officers  
8 testified that they yelled at him to go back and one of  
9 them, Joe Patterson, even took off his gas mask and  
10 exposed himself to tear gas and told him to go back?

11 MR. LATTIMER: Same objection.

12 THE WITNESS: Officers did indicate that  
13 Detective Patterson removed his -- and he himself  
14 indicated he removed his gas mask to try to  
15 verbalize commands to Mr. Matthews.

16 BY MR. HUGHES:

17 Q. And despite that, this man kept coming  
18 towards the police skirmish line; is that correct?

19 A. Yes.

20 Q. Now, could there be some concern by the  
21 police right there on the scene looking at the totality  
22 of facts, what's objectively reasonable in light of the  
23 facts and circumstances which must be assessed not from  
24 20/20 vision of hindsight but what must be assessed from  
25 the perspective of reasonable officers on the scene?

1                   So I'm asking you to look at it from that  
2 point.

3                   I guess you would agree, would you not, that  
4 lethal force should not be used or do you?

5                   Do you think lethal force could have been  
6 used at that point?

7           A.     No.

8           Q.     So non-lethal force could be used; would you  
9 agree with that?

10          A.     No, not right off the bat.

11                  Police officers are trained to continually  
12 assess situations and to continually make threat  
13 assessments, so the fact that somebody is coming towards  
14 the skirmish line -- and Mr. Matthews doesn't claim that  
15 he was running.

16                  He says he was walking with his hands up.  
17 That does not -- would not indicate automatically that  
18 Mr. Matthews is a threat to the police officers that  
19 would require a response with force.

20          Q.     Why don't you tell me what you believe the  
21 facts that are true with regard to Dwayne Matthews, what  
22 facts you believe to be true which will be used by you  
23 in the formation of your opinions.

24                  MR. LATTIMER: Objection. That's an improper  
25 thing for an expert to do.

1 MR. HUGHES: That's exactly what experts do.

2 MR. LATTIMER: Experts do not assume any  
3 facts to be true.

4 The jury determines credibility.

5 Experts make opinions based upon the facts  
6 that they have in hand.

7 They don't make credibility determination  
8 about the facts.

9 MR. HUGHES: Okay.

10 MR. LATTIMER: And if you have an expert  
11 that's done that, then you have been dealing with  
12 an incompetent and stupid expert.

13 BY MR. HUGHES:

14 Q. What opinions will you be rendering regarding  
15 Dwayne Matthews? That's the first thing I want you to  
16 answer.

17 And then after that I want you to tell me  
18 what facts you assume to be true that support your  
19 opinions.

20 A. My opinion regarding the incident involving  
21 Dwayne Matthews is that the arresting officers, as well  
22 as other officers who were there as witnesses or who  
23 assisted, failed to document probable cause in any  
24 written report or charging document at any time, and  
25 that is not consistent with police practices.

1           My also -- my second opinion regarding Dwayne  
2           Matthews is that the police used force against  
3           Mr. Matthews and, again, failed to articulate why they  
4           used force, what was the justification, why it was  
5           objectively reasonable for them to use the force in any  
6           fashion.

7           They failed to complete a Use of Force Report  
8           on that force.

9           They failed to have -- a -- a supervisor  
10          failed to review that Use of Force.

11          Supervisors also failed to review the arrest  
12          because there was no documentation for them to review,  
13          and those failures are not consistent with police  
14          practices.

15          Then you have Menzenwerth eight months later  
16          putting together a police report in an attempt to  
17          provide probable cause for the arrest, as well as  
18          explaining what happened.

19          And to me, that process is inconsistent with  
20          widely accepted police practices, falls below the  
21          standard of care.

22          So when you have Mr. Matthews giving his  
23          deposition and his explanation of what happened and we  
24          know that when somebody gets arrested or has force used  
25          against them by the police, that's a significant moment

1 in their lives.

2 We also know that when police officers make  
3 arrests or use force, the standard response is to  
4 complete reports as contemporaneously as possible, and  
5 when you do it eight months later through Menzenwerth  
6 and through his investigation where he had to refresh  
7 the memory of the officers as to what took place, the  
8 credibility and accuracy and thoroughness of those  
9 reports are called into question.

10 And that's a decision for the jury to  
11 determine who's credible, because we have a dispute of  
12 the facts between police officers and Mr. Matthews, and  
13 that is the opinion that I'll be offering.

14 Q. So just so I understand -- I paid attention  
15 to what you just said.

16 Are there any other opinions you're going to  
17 be rendering with regard to Dwayne Matthews that you  
18 have not already told us?

19 A. I'm not aware of any as I'm sitting here  
20 right now.

21 Q. And you have not expressed any other opinions  
22 in your 18-page written report with regard to Dwayne  
23 Matthews; is that correct?

24 A. Yes.

25 Q. All right. So, you know, you read the

1 Complaint, you read the Third Amended Complaint. The  
2 issues in the Complaint and the Third Amended Complaint  
3 center around whether or not there's probable cause to  
4 arrest and whether or not the force used was excessive.

5 You're aware of that?

6 A. Yes.

7 Q. So you have not expressed any opinions  
8 regarding those issues.

9 Your opinions is is failed to articulate,  
10 failed to complete a Use of Force Report, failed to have  
11 supervisor review, prepared a police report eight months  
12 later.

13 So I mean, that's fine, just so we understand  
14 what your opinions are.

15 A. What you're saying, and I've said it a  
16 couple times already this morning, is that we have a  
17 dispute of the facts between the people that were  
18 arrested, and you can go to -- we can go through each  
19 one of these arrests and I would apply the same  
20 reasoning, that people were arrested, force was used  
21 against some of them, and there's a dispute of facts as  
22 to what happened.

23 You have the Plaintiffs giving their  
24 version.

25 You have the police officers giving their

1 version through Menzenwerth eight months later, and what  
2 I'm trying to say is that when police officers make  
3 arrests and when force is used, there's a process that  
4 is standard in law enforcement in this country, and that  
5 is to articulate probable cause so that the people who  
6 were arrested have an opportunity to defend those  
7 charges.

8 The prosecutor has an opportunity to decide  
9 whether he's going to file charges, and folks like you  
10 and the others in this room have an opportunity to see  
11 what happened should there be a civil suit.

12 But when you don't do a police report until  
13 eight months later, then what the police say is called  
14 into question as to thoroughness and accuracy because of  
15 the -- of the time and the way these investigations were  
16 handled, and then it becomes a matter for the jury to  
17 determine credibility as to whether the Plaintiffs were  
18 correct or whether the police officers were correct, and  
19 we do -- I'm almost finished.

20 Q. Okay.

21 A. And we do have some police officers who  
22 indicated that they didn't remember and that Menzenwerth  
23 helped them, and one police officer indicated that he  
24 made at least 300 arrests since the Ferguson arrests,  
25 and I will tell you from a law enforcement perspective

1 that it's very difficult to recall with specificity  
2 what happened 300 arrests ago, let alone eight months  
3 ago.

4 That's why police officers are taught  
5 nationally to document arrests and force as soon as  
6 possible, generally by the end of their shifts that day,  
7 and that those reports and use of force uses are  
8 reviewed by supervisors to ensure that all of the  
9 elements of the crime are included in the report and the  
10 charging documents and that the force that was used was  
11 within policy and was reasonable.

12 And in this case it did not happen.

13 Q. So I'm happy to move on because you have  
14 not -- as I understand it, you're going to try to assist  
15 the jury in determining who is credible?

16 A. No, I didn't say that. What I said was --

17 Q. But you don't have opinions -- you have not  
18 yet expressed an opinion regarding probable cause to  
19 arrest or arguable probable cause to arrest or whether  
20 or not the force used was objectively reasonable?

21 A. Okay. I'm going to go back to your  
22 statement.

23 I did not say I'm going to assist the jury in  
24 determining who's credible. That's their  
25 responsibility. Not mine.



1 I will explain what police practices are in  
2 this country, widely accepted police practices are  
3 regarding arrests, probable cause and the use of force.

4 They'll make the determination whether the  
5 police are credible or whether the Plaintiffs are  
6 credible or somewhere in between.

7 That's not my function.

8 Q. Just so we understand too, you just said you  
9 said must document by the end of the day.

10 A. That's not what I said.

11 Q. Well, I typed it as you were saying it, so I  
12 think that's what you said.

13 MR. LATTIMER: It doesn't matter what you  
14 think. He's telling you that's not what he said.

15 MR. HUGHES: He did say it.

16 MR. LATTIMER: Okay.

17 MR. HUGHES: But anyway --

18 MR. LATTIMER: The record will speak for  
19 itself.

20 MR. HUGHES: The record will speak for  
21 itself.

22 BY MR. HUGHES:

23 Q. Do you want to correct that?

24 A. Yes, because I did not say that they must do  
25 that by the end of the day.

1           They must do that as soon as reasonably  
2           possible and generally that's by the end of their shift,  
3           by the end of their day.

4           Of course there are circumstances that would  
5           prevent that from happening or allow officers to  
6           complete a report at a later time, but eight months  
7           later, that's unreasonable.

8           Q.     You did read, I'm sure, deposition after  
9           deposition after deposition of the police detectives who  
10          said at the end of their shifts they spoke to their  
11          immediate supervisor and debriefed them on everything  
12          they did, that would be any arrests?

13          MR. LATTIMER:  Objection, mischaracterizes  
14          testimony.

15          BY MR. HUGHES:

16          Q.     Is that correct?

17          A.     They talked about debriefings.

18          Q.     Right.

19          A.     I don't know what they discussed during a  
20          debriefing, but I can assure you that a debriefing is  
21          not articulation or documentation of probable cause in a  
22          police report or a charging document.

23          It's not a sworn instrument where they are  
24          attesting that the --

25          Q.     Are police reports sworn instruments?

1 MR. LATTIMER: Let him finish his answer.

2 BY MR. HUGHES:

3 Q. Are police reports sworn instruments?

4 MR. LATTIMER: Let him finish his answer,  
5 please.

6 You cannot do this. If he's going to answer  
7 questions, he's going to answer questions, but  
8 you're not going to talk while he's answering.

9 It's not going to happen. Why do you keep  
10 doing it?

11 MR. HUGHES: The objection is he didn't  
12 finish his answer.

13 MR. LATTIMER: I said that and you did it  
14 again.

15 BY MR. HUGHES:

16 Q. Okay. Go on.

17 A. Unfortunately when these interruptions  
18 happen, I lose my train of thought, but typically police  
19 officers, after they make an arrest they will complete a  
20 charging document of some fashion.

21 In Florida those charging documents are sworn  
22 to.

23 They will also complete police reports.

24 Q. And --

25 A. And we know that force was used because the

1 officers acknowledged force being used. We know force  
2 was used.

3 Q. Okay.

4 A. The practice in law enforcement is that when  
5 force is used, you will document that use of force  
6 through a Use of Force Report.

7 You will do it in your -- you will document  
8 it in your police report, and those police reports and  
9 Use of Force Reports will be reviewed by supervisors to  
10 ensure that the force was used within policy and was  
11 objectively reasonable, and in this case it was never  
12 done.

13 So a briefing, an after-action briefing at  
14 the end of the day to tell -- to tell a supervisor about  
15 your activities is not a substitute for documentation of  
16 arrests or force.

17 Q. I will say on the record that we have  
18 furnished Mr. Lattimer -- a long time ago, I can't  
19 remember the date offhand -- the Use of Force Report in  
20 the Dwayne Matthews case.

21 So my question to you is did he ever furnish  
22 to you the Use of Force Report in the Dwayne Matthews  
23 case?

24 A. I have not seen that, no.

25 Q. So when you said and when you've testified

1 that we failed to complete a Use of Force Report, you  
2 only say that because you personally have not seen one;  
3 a Use of Force Report was not furnished to you --

4 MR. LATTIMER: Nor to me.

5 BY MR. HUGHES:

6 Q. -- by Mr. Lattimer?

7 MR. HUGHES: Oh, yes, it was.

8 MR. LATTIMER: Nor to me. A Use of Force  
9 Report was not prepared after this incident and you  
10 know it.

11 Nothing was prepared in this case until  
12 Menzenwerth got involved eight months later.

13 MR. HUGHES: We sent you a Use of Force  
14 Report.

15 MR. LATTIMER: You did not. We've been over  
16 this a thousand times, and you keep claiming that  
17 you've given us reports, and every time we go  
18 through this, we find out that you didn't.

19 That's why we had to have additional  
20 depositions, and here you are again.

21 BY MR. HUGHES:

22 Q. Do you have something to say?

23 A. I do.

24 Q. Okay.

25 A. I just want to make it clear that a Use of

1 Force Report is not articulation of the force in a  
2 narrative in a police report.

3 A Use of Force Report is a separate report  
4 that describes the force that was used.

5 Q. Right.

6 A. I just want to make sure we're on the same  
7 page.

8 Q. I know, and that was furnished. That was  
9 prepared and that was furnished.

10 Let me ask you this: Who normally prepares a  
11 Use of Force Report?

12 A. The police officer that used the force.

13 Q. It's not supervisors gathering --

14 A. No.

15 Q. -- the Use of Force Report? Okay.

16 A. No. A supervisor will review the Use of  
17 Force, and some agencies have supervisor's Use of Force  
18 Reports or the Force Report itself has a section for the  
19 supervisor to add comments and sign off on it.

20 Q. Now, what do you believe to be true, the  
21 facts, with regard to Dwayne Matthews' arrest that would  
22 support your opinions?

23 And I'm not asking you to talk about  
24 Menzenwerth.

25 I'm talking about Wednesday, August 13th and

1 any facts that you believe to be true that support your  
2 opinions.

3 A. Yes.

4 MR. LATTIMER: Which opinions?

5 BY MR. HUGHES:

6 Q. Go ahead.

7 MR. LATTIMER: Do you know what he's talking  
8 about? What opinions are you talking about?

9 BY MR. HUGHES:

10 Q. I'm asking you -- you've expressed your  
11 opinions.

12 Now, as far as on the scene Wednesday, August  
13 13th in the area of West Florissant and Highmont, what  
14 facts do you believe to be true that support your  
15 opinions?

16 A. Mr. Matthews was arrested. Mr. Matthews had  
17 force used against him.

18 Q. Anything else?

19 A. I think the facts about the incident itself  
20 remain in dispute, but what's not -- not in dispute is  
21 the fact that Mr. Matthews was arrested and a police  
22 report was not completed that articulated probable cause  
23 within a reasonable period of time, that a charging  
24 document articulating probable cause was not completed  
25 within a reasonable period of time and that a Use of

1 Force Report was not completed or at least I haven't  
2 seen one.

3 And if you didn't complete a police report or  
4 a charging document, there cannot be a review by a  
5 supervisor.

6 And if you don't complete a Use of Force  
7 Report, it's impossible for a supervisor to review that  
8 force.

9 Q. Let's talk about Kerry White, Sandy Bowers  
10 and Kai Bowers.

11 Now, your written report didn't go into any  
12 specifics with regard to those three; would you agree  
13 with that?

14 A. Yes.

15 Q. Okay. So are you going to be expressing any  
16 opinions regarding their arrests or any force used or  
17 not?

18 A. Yes.

19 Q. And what opinions are you going to be  
20 rendering?

21 A. The same opinions that I rendered on the last  
22 discussion about Mr. Matthews, and if you want me to go  
23 through that again, I can.

24 Q. So your opinions that you'll express at trial  
25 with regard to Mr. White, Mr. Bowers and Mr. Bowers is



1 that Menzenwerth's report was prepared eight months  
2 later and the jury should determine who's credible?

3 A. All right. Let me go through my opinions,  
4 that way we make sure they're all included.

5 Q. Okay.

6 A. My opinions would be that those three parties  
7 were arrested by the police, that force was used against  
8 all three of them, that the arresting officers failed to  
9 complete a police report or a charging document and  
10 failed to articulate probable cause to make an arrest.

11 The officers involved also failed to complete  
12 a Use of Force Report describing their force.

13 A supervisor failed to review the  
14 non-existent -- did not have the capability of reviewing  
15 a non-existent Use of Force Report to determine if the  
16 force was within policy and was reasonable.

17 The same supervisors or other supervisors  
18 also did not have an opportunity to review the probable  
19 cause to ensure that the reports were complete and that  
20 the elements of the crime existed and were articulated  
21 in the documentation.

22 And that falls below the standard of care for  
23 arrests and force.

24 And now you have a dispute of facts between  
25 the arrested parties and the police officers.

1           The arrested parties had a significant event  
2     happen in their lives to be arrested, have their freedom  
3     taken away from them, have force used against them from  
4     police, and at the same time you have Menzenwerth go  
5     back and interview officers and help them refresh their  
6     memory about what happened, and he completed a police  
7     report.

8           And my opinions are that's not within  
9     widely accepted police practices regarding arrests or  
10    force.

11          Q.     You would agree that if force is not used,  
12    then a Use of Force Report is not prepared?

13          A.     Yes.

14          Q.     And you read the depositions of the police  
15    officers; is that correct?

16          A.     Yes.

17          Q.     You read the police report; is that correct?

18          A.     Yes.

19          Q.     And there is no force indicated that was  
20    used -- none of the police officers indicated that they  
21    used force in their deposition testimony; is that  
22    correct?

23          A.     No.

24          Q.     Is that correct or no?

25          A.     No, that's not correct.

1 Q. That's not correct? Okay.

2 A. If my memory stands correct, all three of the  
3 occupants of the vehicle were removed from the vehicle  
4 and placed on the ground, and when you take somebody and  
5 put them on the ground, that is force.

6 It may not be force that resulted in an  
7 injury or it may, but when you use more than routine  
8 handcuffing procedures where the arrested party is  
9 compliant and cooperative, if you use more than that,  
10 that will trigger a requirement that you report that  
11 force, and that includes taking somebody to the ground.

12 Q. So you're going to talk about standards of  
13 care, police practices, is that correct, standards of  
14 care of police?

15 A. Yes.

16 Q. And you said they were placed on the ground.  
17 It may not have resulted in injury, may or may not have;  
18 is that correct?

19 A. Yes. Also the fact that they're taking  
20 somebody to the ground, that's force and that is what  
21 needs to be reported.

22 Q. You know, again, I didn't have the benefit of  
23 the report to prepare for since you did not specify  
24 these three in your report, but you would agree that  
25 they did not receive any medical treatment whatsoever

1 for any injury or perceived injury?

2 A. I don't dispute that.

3 Q. So as far as you know, those three people  
4 were not injured?

5 A. I believe one of them had to have some -- was  
6 having some physical therapy for a back issue.

7 Q. Some prior physical therapy?

8 A. Yes, but I don't recall any report of injury  
9 from that contact.

10 Q. Now, you said that they were arrested by the  
11 police.

12 You haven't indicated in your written report  
13 or even now that there was not arguable probable cause  
14 considering the totality of facts that they may have  
15 committed some offense?

16 A. Is that a question?

17 Q. Yeah. You have not said that.

18 MR. LATTIMER: Said what?

19 BY MR. HUGHES:

20 Q. You have not said that in the written report  
21 or in your deposition; is that correct?

22 MR. LATTIMER: Said what?

23 BY MR. HUGHES:

24 Q. That there was not arguable probable cause.

25 A. I haven't said that.

1 Q. Right, and you didn't put that in your  
2 written report either?

3 A. No, because I didn't read the probable cause.

4 So are you trying to ask me to conclude that  
5 there was probable cause or are you just asking me did I  
6 comment on that?

7 Q. I mean, I just don't want to be surprised  
8 with an opinion at trial, so you're not rendering an  
9 opinion?

10 A. I am not.

11 Q. Okay.

12 A. However, if you were to ask me do I believe  
13 probable cause existed for the arrest of failure to  
14 disperse, I will respond to that question.

15 Q. Well, the question is whether or not there's  
16 arguable probable cause to arrest people for some  
17 offense. I mean, that's what we talk about.

18 A. Is that what you're asking me?

19 Q. Yeah.

20 MR. LATTIMER: You're asking about people or  
21 asking about Mr. Bowers, the two Bowers and --

22 MR. HUGHES: Bowers, Bowers and White, Kerry  
23 White.

24 MR. LATTIMER: Okay.

25 THE WITNESS: In reading the documentation, I

1 did not see probable cause to make the arrests that  
2 they did.

3 BY MR. HUGHES:

4 Q. This happened like after midnight on August  
5 13th?

6 A. Yes.

7 Q. So again, there had been significant  
8 rioting?

9 A. Yes.

10 Q. And there is a large crowd of people on a  
11 street called Chambers Road that were throwing objects  
12 at police, rocks, bottles, batteries, even occasional  
13 gunfire; you don't dispute that?

14 A. I don't dispute that. That's been reported.

15 Q. And the crowds were told to disperse?

16 A. Yes.

17 Q. The crowd did start to disperse?

18 A. Yes.

19 Q. Part of the skirmish line goes to a street  
20 called Lorna Lane?

21 A. Yes.

22 Q. So because of the crowd, part of the crowd's  
23 on Lorna Lane, part of the skirmish line is on Lorna  
24 Lane; you don't dispute that?

25 A. No.

1 Q. And the police radio had indicated right  
2 around this time that someone had been shot?

3 A. I don't recall that, but I don't dispute it.

4 Q. And then there's a police helicopter that  
5 radios that this white car with no headlights is driving  
6 on Lorna Lane towards the skirmish line?

7 A. I remember the police helicopter describing a  
8 car.

9 I don't recall if the helicopter itself -- I  
10 don't dispute it, where the -- they said that lights  
11 were off. Mr. White said the lights were on.

12 Q. But you don't dispute that on Lorna Lane  
13 there is this car, a white car driving towards the  
14 police skirmish line?

15 A. I don't dispute that.

16 Q. And police officers testified they yelled at  
17 the car to stop, but it kept coming towards the skirmish  
18 line?

19 A. I don't recall specifically that they yelled  
20 for it to stop.

21 What I do recall is that the vehicle was  
22 proceeding towards the skirmish line. The car  
23 eventually stopped and was approached by the police  
24 officers.

25 Q. Do you recall police officers testifying that

1 they went up to the occupants and said, "Why didn't you  
2 stop? Didn't you hear us yelling to stop?"

3 And the passengers said, "Yes, but the driver  
4 kept going"?

5 A. I heard -- I read that in the police reports,  
6 yes.

7 Q. And the police testimony?

8 A. I don't dispute that.

9 Q. So at that point you're saying, you know,  
10 when the police officers are faced with being told --  
11 first of all, on this night when the car is driving at  
12 the skirmish line and then the police officers are told  
13 that the occupants heard them yelling to stop but the  
14 car kept going, you're saying that the officers at the  
15 scene making a judgment on whether or not there's  
16 arguable probable cause to arrest them for something  
17 should not have thought there was arguable probable  
18 cause to arrest them for something?

19 A. Well, you said that the police officers knew  
20 that the occupants heard them. I don't know that  
21 that's -- that's their opinion.

22 Q. No, no. That's what they testified.

23 MR. LATTIMER: Who?

24 THE WITNESS: The police officers may have  
25 been yelling, but you just said the police officers



1           knew that --

2       BY MR. HUGHES:

3           Q.     No.

4           A.     -- the occupants heard them, and that's what  
5       I'm questioning.

6           Q.     No. What I said was when the police officers  
7       walked up to them and said, "Why didn't you stop? Did  
8       you hear us yelling?" the occupants said, "Yes, but  
9       Mr. White kept driving."

10          A.     That's what the police officers said.

11          Q.     Yeah.

12          A.     I don't know that that's --

13          Q.     In their deposition.

14          A.     I don't know that that's factual, but that's  
15       what they said.

16          Q.     If that is factual, would a police officer on  
17       the scene have arguable probable cause to think that  
18       these people should be arrested for something?

19          A.     Not --

20               MR. LATTIMER: Objection as to relevance and  
21       materiality.

22               THE WITNESS: Not necessarily. You have to  
23       investigate to find out what is going on.

24               There may be some legitimate reason for that  
25       vehicle continuing on.

1           Maybe the -- the vehicle did -- the occupants  
2           or the driver did not hear the command to stop.

3           I don't know what his reasoning is, but what  
4           we do know is that he came -- he was approaching,  
5           and you used the term "driving at".

6           I would say he was approaching -- they were  
7           approaching each other as the skirmish line is  
8           walking, the vehicle is traveling, and at some  
9           point the vehicle stopped and I believe he pulled  
10          to the right and then they were approached by the  
11          police officers and subsequently arrested for  
12          failure to disperse.

13       BY MR. HUGHES:

14           Q.     Who said that the skirmish line was  
15           approaching?

16           A.     That's what I gathered from the facts,  
17           because they were walking down the street.

18           Q.     I mean, once they saw the car coming towards  
19           them, are you saying any police officers said they  
20           kept going towards the car themselves, the skirmish  
21           line?

22           A.     I didn't follow that last question.

23           Q.     All right.

24           A.     What I'm trying to describe is in my  
25           understanding of this incident is that the police

1 officers are moving down the street, they're walking.

2 There's a vehicle with them.

3 There's a white vehicle that is now heading  
4 in the direction of the police officers. They're  
5 approaching each other.

6 The vehicle stops. The occupants and the  
7 driver are subsequently arrested.

8 And I'll go back to the same argument,  
9 that -- or the same opinion. It's a fact that those  
10 three were arrested, White and the two Bowers.

11 The police officers who arrested them did not  
12 complete a police report, did not articulate probable  
13 cause in a police report or any charging document.

14 Force was used. Even if it's minimal force  
15 by taking somebody to the ground, that is force that  
16 would trigger the necessity to have a Use of Force  
17 Report completed.

18 A Use of Force Report was not completed.

19 Subsequently it could not be reviewed by a  
20 supervisor to determine if it was within policy or was  
21 objectively reasonable.

22 Because a police report was not completed or  
23 a charging document, a supervisor could not confirm that  
24 probable cause was articulated in those documents to  
25 ensure completeness and thoroughness.

1           That is -- and then you have Menzenwerth  
2       eight months later going back and completing police  
3       reports, refreshing memory.

4           That is not consistent with widely accepted  
5       police practices regarding arrests and force.

6           So what -- and what you end up with is you  
7       have the testimony of the three people who were  
8       arrested, significant events in their lives, versus the  
9       testimony of officers from -- through Menzenwerth, and  
10      it's up to the jury to determine credibility.

11          Q.     Now, you know, all of the St. Louis County  
12      police officers, and I'll say the same about the  
13      Maryland Heights officers in a minute, but all the  
14      St. Louis County police officers, you've read their  
15      depositions, right?

16          A.     Yes.

17          Q.     You would agree that they're all very smart  
18      officers and all very well trained?

19               MR. LATTIMER:  Objection, relevance and  
20      materiality.  How could he possibly know how smart  
21      officers are?

22               THE WITNESS:  I don't know how smart they are  
23      and I don't know how well trained they are, but I  
24      would accept that the officers are certified -- the  
25      officers are certified by the State of Missouri to

1 be police officers.

2 BY MR. HUGHES:

3 Q. You say you don't know how smart they are.

4 I mean, many, if not most of the officers,  
5 have higher degrees than you do?

6 I mean, you read their depositions.

7 A. Yes.

8 Q. Okay. And --

9 A. Having a degree does not equate to  
10 intelligence --

11 MR. LATTIMER: Trust me.

12 THE WITNESS: -- or how smart you are.

13 MR. LATTIMER: It doesn't. That's for sure.

14 BY MR. HUGHES:

15 Q. And I don't mean to disparage.

16 I think very highly of routine patrol  
17 officers.

18 I don't mean to disparage them, but all of  
19 these --

20 A. To help you --

21 Q. Wait, wait, wait. Let me finish the  
22 question.

23 Okay. You want to help me somehow?

24 A. I would say that if they have degrees or  
25 higher degrees, that they're educated.

1 I would help you by saying if -- if they're  
2 police officers for St. Louis County, they've achieved a  
3 certain amount of -- of training that's prescribed by  
4 the State to be police officers, and I will give them  
5 that, of course.

6 But you asked me --

7 Q. Okay.

8 A. -- that they're smart and something else,  
9 which I can't --

10 Q. Well, as I started to say in the question,  
11 I'm not at all disparaging routine patrol officers.

12 I think very highly of them, but you're aware  
13 that each one of these detectives who are being sued, I  
14 mean, one of them is a Sergeant, was a Sergeant, then  
15 has since been promoted to a Sergeant, but then all the  
16 ones who aren't Sergeants, I mean, they're not routine  
17 patrol officers. They're part of, you know, elite teams  
18 that they have to apply to and be recommended for and,  
19 you know, they have to, you know, get recommendations,  
20 you know.

21 MR. LATTIMER: Is there a point here?

22 BY MR. HUGHES:

23 Q. You read, you know, that these people were  
24 part of the Neighborhood Enforcement Team and part of  
25 the Drug Street Team; is that correct?

1 A. Yes.

2 MR. LATTIMER: Objection as to the relevance  
3 and materiality.

4 BY MR. HUGHES:

5 Q. Those are elite officers; you would agree  
6 with that?

7 MR. LATTIMER: How would he know?

8 THE WITNESS: I would say they are.

9 MR. HUGHES: Because he's an expert. He was  
10 a police officer for years.

11 THE WITNESS: I would say that those are  
12 police officers that are in specialized units that  
13 are with more responsibility than a standard patrol  
14 officer.

15 I would also say that these specialized,  
16 educated, trained police officers know that when  
17 you make an arrest, you're required to document the  
18 arrest.

19 You're required to articulate probable cause  
20 in a police report and a charging document.

21 You are required to complete a Use of Force  
22 Form.

23 BY MR. HUGHES:

24 Q. Okay.

25 A. And I would also offer that these officers,

1 these specialized -- these officers that are in  
2 specialized units chose not to do that, and that is  
3 below the standard of care of widely accepted police  
4 practices regarding arrests and use of force.

5 Q. So again, you want to talk about standard of  
6 care and widely -- what was the words --

7 A. Widely accepted police practices, and I'll  
8 also offer they violated their own policies.

9 Without even seeing their policies, I can  
10 tell you that they have a policy that requires them to  
11 articulate probable cause and complete a police report  
12 upon arrest and to complete a Use of Force Form.

13 And they have a policy that requires a  
14 supervisor to review an arrest report and sign off on it  
15 and to approve it and to review and investigate use of  
16 force.

17 Q. Okay.

18 A. And they violated their own policies.

19 Q. Now, you never personally were in a  
20 specialized unit like the Drug Street Team; is that  
21 correct?

22 A. I was in --

23 Q. I mean, you know --

24 A. Was I in the Drug --

25 Q. Core person as an -- yeah, go on. You can



1 answer.

2 A. No, I was not in a Drug Unit, nor was I in  
3 a --

4 Q. Neighborhood Enforcement?

5 A. -- Neighborhood Enforcement Unit, but what I  
6 do have is seven years of experience --

7 Q. Okay. But --

8 MR. LATTIMER: Huh-uh, huh-uh. Don't do it.  
9 Don't do it.

10 THE WITNESS: -- seven years of experience as  
11 an investigator, including two years of homicide  
12 and about five years of investigating --

13 BY MR. HUGHES:

14 Q. All right. Well --

15 A. -- major violent crimes and I've made  
16 countless arrests.

17 Q. All right.

18 A. And I've -- I've used force, and I know that  
19 when I make an arrest, I'm required to document the  
20 probable cause in that arrest -- in that report, in that  
21 charging document, and when I used force, I've filled  
22 out Use of Force Forms.

23 Q. Okay. So you said you were in homicide, I  
24 guess.

25 So anyway, that's a specialized unit; is that

1 correct?

2 A. As a detective I was in a specialized unit  
3 for seven years.

4 Q. But you know someone in specialized units,  
5 they have to apply for those specialized units, they  
6 have to be interviewed for them and they have to have  
7 recommendations for them?

8 MR. LATTIMER: Objection as to relevance --

9 THE WITNESS: Generally.

10 MR. LATTIMER: -- and materiality.

11 BY MR. HUGHES:

12 Q. What was your answer?

13 A. Generally.

14 Q. So you're putting yourself in this category  
15 because you're in homicide, but you know people in  
16 specialized units are, you know, a little bit more  
17 special, a little bit even more training; is that  
18 correct?

19 A. It depends on what unit and what agency and  
20 what kind of function they're performing.

21 Q. So you did not have extra training when you  
22 were in homicide?

23 A. No, I did have extra training.

24 Q. Okay.

25 A. But what I'm offering is that, as you said

1 earlier, these officers in the Street Enforcement Unit  
2 and Drug Enforcement Unit who have additional training,  
3 who are selected, who are interviewed, who are -- who  
4 did apply, that -- not disparaging patrol officers, but  
5 these are -- you used the term "elite".

6 I would say these are more specialized  
7 officers.

8 These officers even more so than new police  
9 officers know the requirements for arrests, reporting  
10 and use of force reporting.

11 They know it even better based on their  
12 experience, yet they failed to do it.

13 Q. Now let's talk about -- and Mr. Plunkert's  
14 going to ask you questions about Damon Coleman and  
15 Theophilus Green, but I'm going to talk about them a  
16 little bit.

17 That happened Monday, August 11th around 8:30  
18 at night.

19 Does that sound reasonably correct to you?

20 Maybe it's sooner than that. I don't know,  
21 but --

22 A. I'm seeing on the report 20:30 hours or 8:30  
23 at night.

24 Q. All right. Just so we understand, you're not  
25 going to be giving testimony against any individuals of

1 St. Louis County police officers with regard to Damon  
2 Coleman and Theophilus Green; is that correct?

3 A. Yes, correct.

4 Q. Are you going to be rendering opinions about  
5 Maryland Heights officers?

6 A. Yes.

7 Q. And you know they're members of the Civil  
8 Defense Response Team, I believe?

9 A. I know they responded to the incident. Is  
10 that what you're speaking of?

11 Q. No.

12 A. As a response --

13 Q. Well, getting back, like you said with the  
14 other officers, St. Louis County, you said you don't  
15 know the training, so you're not going to be giving any  
16 opinions regarding the training; is that correct?

17 A. No. I'm going to assume that they are  
18 certified by the State of Missouri and have achieved the  
19 necessary training requirements to have that  
20 certification.

21 Q. So as far as you're concerned, all the  
22 St. Louis County police officers and the Maryland  
23 Heights officers were trained, were well trained; is  
24 that correct?

25 A. You threw the word in "well".

1 Q. Okay.

2 A. I'm going to say --

3 Q. Do you want to qualify it?

4 A. Yes.

5 Q. Are you agreeing that all the St. Louis  
6 County police officers and Maryland Heights officers  
7 were trained, were certified by the State?

8 A. Yes.

9 Q. And as far as their specific training  
10 records, you don't even know what they are; is that  
11 correct?

12 A. Correct.

13 Q. But you don't dispute that they're trained?

14 A. No.

15 Q. None of these officers were, you know,  
16 rookies put in a situation where, you know, they were  
17 right out of the Academy; is that correct?

18 A. Correct.

19 Q. Now, again, Damon Coleman and Theophilus  
20 Green, there had been -- let's say this was August 11th,  
21 so August 10th was -- well, I guess you already  
22 testified that August 9th there might have been some  
23 disturbance and August 10th there was some significant  
24 rioting?

25 A. Yes.

1 Q. You know, a building burned, looting, things  
2 thrown?

3 A. Yes.

4 Q. And on Monday, August 11th, 8:30, you don't  
5 dispute the crowd was told to disperse, but Green and  
6 Coleman didn't disperse?

7 Well, first of all, you don't dispute the  
8 crowd was told to disperse?

9 A. I believe it was reported that the crowd was  
10 told to disperse.

11 Q. Did you see the video, by the way?

12 A. No.

13 Q. You know, Mr. Lattimer's video, his clients  
14 had cell phones where they were recording.

15 So that wasn't provided to you?

16 A. I didn't see a video, no.

17 Q. And in that video I just represented to you  
18 that you can see some people dispersing, but anyway, so  
19 do you dispute one way or another that some people were  
20 dispersing --

21 A. I have no reason to dispute --

22 Q. -- after the police told them to disperse?

23 A. I have no reason to dispute that.

24 Q. And you have no reason to dispute that  
25 Mr. Green and Mr. Coleman did not disperse?

1 MR. LATTIMER: Objection. There's no facts  
2 to support that.

3 THE WITNESS: I think the testimony -- the  
4 testimony from Mr. Green and Mr. Coleman was that  
5 they were trying to get back to their vehicle so  
6 that they could leave the area and they couldn't do  
7 so, and there were police coming from different  
8 directions that prevented them from doing so and  
9 they were also aware of less lethal rounds being  
10 fired and they were -- or they were getting down,  
11 they were concerned about their own safety, so they  
12 didn't make it to their vehicle.

13 BY MR. HUGHES:

14 Q. You read the depositions of the Maryland  
15 Heights Lieutenant and two Maryland Heights officers  
16 with the Civil Response Defense Team?

17 A. Yes.

18 Q. You saw that the Lieutenant believed that he  
19 saw them throwing something, saw them perhaps throwing  
20 rocks?

21 A. I believe the Lieutenant said that he saw a  
22 throwing motion but did not see what they were throwing  
23 or if they were throwing anything.

24 Q. And at least in the deposition, I guess, you  
25 read that a voice was heard saying, "Quit throwing

1 rocks, bro"?

2 A. Yes. And let me -- let me clarify or add to  
3 my previous statement.

4 The Lieutenant said that he did see throwing.  
5 He couldn't tell what -- what they were throwing. He  
6 doesn't know -- he saw throwing motions.

7 The question was, "So these individuals, you  
8 saw them in a throwing motion, but you don't know what  
9 they were throwing?"

10 He said, "Yes."

11 So he didn't -- that's what he said.

12 But yes, he -- I did hear the testimony  
13 of -- that there was a audio that said, "Stop  
14 throwing --"

15 Q. "Rocks, bro"?

16 A. "-- rocks bro," yes.

17 Q. All right. And when the Maryland Heights  
18 Lieutenant and the officers went over to arrest them,  
19 Mr. Coleman and Mr. Green didn't offer any resistance;  
20 is that correct?

21 A. I think that's what I read, yes.

22 Q. So you would not be expressing any opinions  
23 regarding force that was used?

24 A. No, because we -- again, we have a dispute of  
25 facts.



1 Q. What's the dispute?

2 A. I think, if I'm correct, Green and Coleman  
3 claim that they were thrown to the ground, that force  
4 was used against them, and we have the police officers  
5 that say they did not.

6 So again, we have a situation where an  
7 individual's arrested, a significant event in his life  
8 claiming that force was used against him.

9 Then you have police officers that did not  
10 complete police reports or force reports  
11 contemporaneously with the incident but did so eight  
12 months later with Menzenwerth who had an opposite  
13 opinion.

14 So we have a dispute of the facts, and that's  
15 really up to the jury to determine whether force was  
16 used against them or not.

17 Q. You did not put in the report, so I guess we  
18 weren't prepared for it, I don't know where in those  
19 depositions they said they were thrown to the ground,  
20 but you think somewhere in the depositions they may have  
21 said that?

22 MR. LATTIMER: They were shot repeatedly,  
23 thrown to the ground, manhandled and handcuffed.  
24 That's what they said in the deposition.

25 MR. PLUNKERT: What's the objection?

1 MR. LATTIMER: I said what I said.

2 THE WITNESS: So let's go through their  
3 deposition, and this is the deposition of Damon  
4 Coleman.

5 He said he was -- he had six bruises that he  
6 believes came from projectiles from police  
7 officers.

8 He said he felt six different impacts. He  
9 was hit in the chest. He had Mace hit him in the  
10 face or what may have turned out to be a pepper  
11 ball hit him 'cause he -- he felt the effects of  
12 Mace.

13 He says that he was kicked, he was struck  
14 with an asp or a stick.

15 So without going through the rest of the  
16 deposition, I'm going to say --

17 BY MR. HUGHES:

18 Q. All right.

19 A. -- that Mr. Coleman does claim that force  
20 was --

21 Q. Did either --

22 MR. LATTIMER: Let him finish.

23 BY MR. HUGHES:

24 Q. Did either one of them have medical  
25 treatment?

1 A. I don't believe so.

2 Q. Let's talk about Antawn Harris.

3 What opinions --

4 MR. LATTIMER: A-N-T-A-W-N.

5 MR. HUGHES: Antawn.

6 MR. LATTIMER: A-N-T-A-W-N. You're calling  
7 him "Antoine".

8 BY MR. HUGHES:

9 Q. Antawn. Okay. Are you going to render any  
10 opinions with regard to Antawn Harris and St. Louis  
11 County?

12 A. Yes.

13 Q. What opinions?

14 A. That force was used against him that was not  
15 documented by those that used the force.

16 Q. And --

17 A. And my same opinion would be that that's not  
18 consistent with widely accepted police practices  
19 regarding the use of force.

20 Q. Force was used against Antawn Harris by whom,  
21 just so we understand?

22 A. I don't think we know who used the force.

23 Q. Okay.

24 A. But let me look -- let me look at  
25 Menzenwerth's report.

1           We don't know who used the force against  
2     Antawn.

3           Q.     All right. Now, you don't know who used the  
4     force against Antawn Harris, but you will not be saying  
5     that force was pursuant to the official policy, you  
6     know, of St. Louis County; is that correct?

7           A.     Can you repeat that question?

8           Q.     Yeah. I guess I didn't ask a good question.  
9                 You said the force was not documented. Are  
10    you going to say that the official policy of St. Louis  
11    County is don't document force, use of force?

12                And if so, what is the specific policy?  
13    Identify it.

14           A.     I would say that the St. Louis County Police  
15    Department has a -- without even seeing it, I know that  
16    they have a policy regarding a documentation of force.

17           Q.     Okay.

18           A.     But I would also offer that in the arrests  
19    that we're talking about, and we're not talking about  
20    one arrest, we're talking about a series of arrests by  
21    different officers, sometimes the same officers where  
22    force was used, arrests were made and none of it was  
23    documented by the arresting officers or those that used  
24    the force itself.

25                So they have a policy that says you should

1 document probable cause in arrests.

2 There's another policy that says you should  
3 document force, but these officers, all of these  
4 officers violated that policy, and perhaps it became the  
5 custom and the practice during the riots --

6 Q. Okay.

7 A. -- not to do so, and that would not be  
8 consistent with widely accepted practices.

9 Q. You're not aware of any custom prior to  
10 August 11th, 2014; is that a fair statement?

11 A. I am aware of the --

12 Q. And if so, identify it.

13 A. Okay. The Department of Justice conducted an  
14 investigation of the Ferguson Police Department where  
15 they've identified a custom and practice of arrests  
16 without probable cause, force that was used that was not  
17 documented and not reviewed by supervisors. That's for  
18 Ferguson.

19 I don't -- they did not investigate St. Louis  
20 County for that, but what they did say in the Department  
21 of Justice After-Action Report of the civil  
22 disturbances, they did indicate that force was not  
23 documented and was not tracked and should be.

24 They also indicated that even though we're in  
25 a -- the police officers found themselves in a difficult

1 situation, in the middle of a riot, that does not  
2 alleviate them of the responsibility to complete  
3 those -- to track and document force.

4 Q. I notice you did pick out a few things that  
5 were said in those reports and you included them in your  
6 18-page written report; is that correct?

7 A. Yes.

8 Q. And so what you're saying is you read the  
9 176-page COPS Report and 184-page After-Action Report,  
10 and after doing that you repeated some things, such  
11 as you said force was not documented and tracked?

12 A. Yes.

13 Q. Okay.

14 A. And one of the reasons why --

15 Q. But --

16 A. -- often times I do that in my reports is  
17 because I've had attorneys, defense attorneys question  
18 me about my opinions and say, "Well, that's your  
19 opinion, and who else's opinion is it?"

20 So often times I provide supportive material  
21 that would convey to the reader that this is not just my  
22 opinion. This is widely accepted police practices.

23 Q. Yeah, yeah.

24 A. And that's why I included the Department of  
25 Justice's reports.

1 Q. Let's go back to my question.

2 My question was -- and I wasn't asking your  
3 opinion in my question.

4 My question was with regard to facts.

5 It was prior to August 11th, 2014 there is no  
6 custom of St. Louis County that you're aware of --

7 A. Yes.

8 Q. -- is that correct?

9 A. Yes, correct.

10 Q. I guess you're aware that Mr. Harris had a  
11 photograph that was, you know, posted on his Twitter  
12 account or he posted on the Internet that showed the  
13 bridge of his nose up here, you know, redness,  
14 swelling?

15 A. Yes.

16 Q. And you're aware that this happened on a day  
17 when, you know -- August 11th there had been significant  
18 rioting the night before and also then on this date; is  
19 that correct?

20 A. Yes.

21 Q. Which included rocks being thrown?

22 A. Yes.

23 Q. So you don't even know how he received this  
24 injury where he had some redness and swelling at the  
25 bridge of the nose; is that correct?

1 A. No. I wasn't there.

2 Q. Right.

3 A. But I -- we have his statement, his  
4 deposition and then you have police officers that saw  
5 him and then had a vision blocked by a vehicle and then  
6 subsequently saw him on the ground, so no, I don't know  
7 how he received that injury.

8 Q. So I mean, as far as you know, he could have  
9 been injured by a rock; is that correct?

10 A. I don't know how he -- how he -- what  
11 projectile struck him.

12 Q. And as far as you know, you said, you know, a  
13 vehicle drove by.

14 Do you know whose vehicle that was?

15 A. I believe it was -- I'm going to look at it  
16 right now.

17 It was the St. Louis Metropolitan Police  
18 Department's SWAT vehicle.

19 Q. So that's the City of St. Louis?

20 A. Yes.

21 Q. You're aware of that?

22 A. Yes.

23 Q. So it was not a St. Louis County vehicle?

24 A. The vehicle was not a St. Louis County  
25 vehicle.



1 Q. So --

2 A. Well, the officer that saw him before and  
3 after was with the St. Louis County Police.

4 Q. Yeah, an officer that was on the street; not  
5 in the vehicle?

6 A. Yes.

7 Q. And do you even know what his injury was,  
8 what his diagnosis was?

9 A. I believe his father took him to the  
10 hospital, but I don't recall what the diagnosis was.

11 Q. Were you furnished his medical records in the  
12 emergency room?

13 A. I don't recall whether I was or not.

14 Q. If I told you that the diagnosis was a  
15 contusion and abrasion, which is a bruise and a scrape,  
16 and he was discharged one hour -- less than an hour  
17 after being seen by an emergency room nurse, would you  
18 have any reason to dispute that?

19 A. No.

20 Q. Let's talk about Nathan Burns, Monday, August  
21 11th, around 11:00 p.m. or 11:30 p.m.

22 This happened at the West Florissant and  
23 Highmont Drive area?

24 A. Yes.

25 Q. Again, you don't dispute there was rioting

1 the night before and that night too?

2 A. Do not dispute that.

3 Q. And you don't dispute that the crowd was  
4 being told to disperse?

5 A. There's been reports of that, so I don't  
6 dispute it.

7 Q. You don't dispute that rocks are being thrown  
8 at police?

9 A. Do not dispute it.

10 Q. And what opinions are you going to be  
11 rendering with regard to Nathan Burns?

12 A. The same opinions I rendered on every other  
13 arrest in that Nathan Burns was arrested by St. Louis  
14 County Police Department, that the arresting officers  
15 failed to document probable cause in an arrest report  
16 and in a charging document.

17 Because they failed to document it in a  
18 report or a charging document, there could be no  
19 supervisory review to ensure that the report and the  
20 elements of the crime were contained in the report by a  
21 supervisor.

22 And I also know that force was used against  
23 Nathan Burns, and the same officers failed to document  
24 that force in a Use of Force Report, and by doing so,  
25 they failed to allow for a supervisory review of the

1 force to ensure that it was within policy and that it  
2 was objectively reasonable.

3 I'm also of the opinion that by Menzenwerth  
4 doing a report eight months later through his interview  
5 and refreshing process of their memory, that -- all of  
6 that is inconsistent with police practices and would  
7 also be in violation of their own policies regarding  
8 arrests and force.

9 Q. When you say you know force was used against  
10 Burns, can you specify what force you're talking about?

11 A. Nathan Burns reports that he was pepper  
12 sprayed, he was drenched with the spray.

13 It soaked through his clothes, so it was not  
14 just one application of pepper spray.

15 He had his hair pulled. He was slammed to  
16 the ground.

17 He -- a police officer put a finger in his  
18 ear.

19 He claims another police officer reached into  
20 his pants with -- and touched his private parts with --  
21 with -- I believe he may have said there was Mace on the  
22 officer's hands or he used Mace to spray him even  
23 further, so he claims that there was force.

24 Officers of the St. Louis Metropolitan Police  
25 Department deployed -- let me -- let me rephrase -- let

1 me strike that.

2 So officers of the St. Louis Metropolitan  
3 Police Department deployed OC spray at persons.

4 One of them may have been Burns. They don't  
5 really say that for clarity in their report.

6 Q. Again, the Metropolitan Police Department is  
7 the City Police Department?

8 A. Correct.

9 Q. Okay.

10 A. So that's the information we have from  
11 Mr. Burns.

12 Q. Now, Mr. Burns testified, correct me if I'm  
13 wrong, that he offered no resistance; is that correct?

14 A. I don't dispute that.

15 Q. Now, you would agree then that if you're  
16 talking about the OC spray, that was done by the City  
17 Police Department, the St. Louis Metropolitan Police  
18 Department; is that correct?

19 A. There's a -- a -- first of all, there's a  
20 report that the Metropolitan Police Department used OC  
21 spray.

22 That doesn't mean other agencies didn't --  
23 did not use OC spray. We do know that they did.

24 Q. Yeah. Okay. Did anyone see a St. Louis  
25 County police Department use OC spray?

1 A. I didn't see it reported.

2 Q. Well, did even Nathan Burns see a St. Louis  
3 County Police Department use OC spray?

4 A. I don't think he -- he was able to identify  
5 who used OC spray, but what he did say was that the  
6 arresting officers used OC spray on him and those were  
7 McCann, McCoy and Hill of the St. Louis County Police  
8 Department.

9 The other thing I would say about Nathan  
10 Burns is that he was turned over to -- to paramedics and  
11 then to the hospital, so he was never even taken into --  
12 to be booked in either -- in the County Jail.

13 Q. Are you confusing Nathan Burns with somebody  
14 else?

15 A. I don't think so. I'm -- I'm reading from my  
16 notes.

17 Q. Yeah.

18 A. And I'm saying he was turned over to  
19 paramedics, hospitalization, then home.

20 Q. You have notes, you know, summarizing your  
21 notes of --

22 A. No. Right here I have TOT paramedics, then  
23 arrow to hospital and then home 'cause it was unknown  
24 who transported him.

25 Q. Okay. Are you thinking of Dwayne Matthews

1 there?

2 A. No, because Dwayne Matthews was escorted by  
3 two females and eventually made his way home and was  
4 transported to the hospital.

5 Q. That's what you think?

6 A. Yeah.

7 Q. All right. It would be --

8 A. Oh, wait. No. Wait a minute. Matthews was  
9 not transported -- Matthews was arrested and booked.

10 Nathan Burns I think was the one that was  
11 turned over to the paramedics because of all of the OC  
12 spray that he claimed he had.

13 Q. So you're again saying that Dwayne Matthews  
14 was arrested and booked?

15 A. We can go back and look at Dwayne -- let me  
16 pull out the Dwayne Matthews files.

17 Q. It would have been easier if you would have  
18 put these things in your report so --

19 A. Well, the thrust of my report still -- it  
20 doesn't matter what happened to these individuals  
21 afterwards.

22 The thrust of my report is the fact that the  
23 arrests were not documented, nor was the force  
24 documented.

25 Q. So well, anyway, let's concentrate on Nathan

1 Burns.

2 So just so I understand, as you sit here  
3 today, you're not going to testify as far as you know  
4 that there's no arguable probable cause to arrest Nathan  
5 Burns because you believe he was not arrested, he was  
6 just turned over to paramedics right away and then taken  
7 to the hospital; is that correct?

8 A. Let me review the record.

9 MR. LATTIMER: That's a negative question.  
10 What is the question?

11 THE WITNESS: No. Nathan Burns was taken to  
12 the Justice Center.

13 BY MR. HUGHES:

14 Q. All right. Okay. So --

15 A. So my note there was incorrect.

16 Q. All right. Are you going to be rendering any  
17 opinions regarding arguable probable cause for the  
18 arrest of Nathan Burns?

19 A. I'm going to offer the same opinions I've  
20 offered in my report and I've gone over with each and  
21 every arrest.

22 Q. Well, just so we understand, Nathan Burns,  
23 your opinions will be -- oh, wait.

24 You already said report eight months later,  
25 refreshed memory, inconsistent with police practices and

1 violation of own policies regarding arrest; is that  
2 correct?

3 A. And use of force.

4 Q. And use of force.

5 I guess you're accepting -- well, you're  
6 accepting, since you mentioned it as possibly true, that  
7 Mr. Burns was slammed into the ground, a police officer  
8 put his finger in his ear, another police officer  
9 touched his private parts and this was with Mace; is  
10 that correct?

11 A. Mace on -- what Mr. Burns testified to in his  
12 deposition, that a police officer had Mace on his hands  
13 and reached into his pants and touched his private  
14 parts.

15 Q. All right.

16 A. And I'm not -- again, the problem with each  
17 of these arrests is that you have somebody being  
18 arrested, force being used against them.

19 It's a significant event in their life and  
20 they're reporting that this is what happened.

21 You then have police officers who normally  
22 would report arrests and probable cause and force  
23 contemporaneously.

24 When they do it eight months later through  
25 Menzenwerth and we have Menzenwerth indicating that he



1 had to refresh the memory of all of the officers and go  
2 over the facts with them, their -- that report becomes  
3 less credible, calls -- calls into question the accuracy  
4 and thoroughness of the reporting.

5 And that is why police officers are taught  
6 nationally when you make an arrest, you document it as  
7 soon as possible, as soon as practical. It's usually  
8 done before the end of the shift.

9 When you use force, you document it so that  
10 years later there's no question about what they remember  
11 because they put it in the police report  
12 contemporaneously with the event. Police officers are  
13 taught this from day one.

14 And I'm going to -- I started law enforcement  
15 in 1974.

16 A lot of things have changed in law  
17 enforcement since 1974.

18 What has not changed, what remains in effect  
19 today is that when you make an arrest, you articulate  
20 probable cause in a police report, in a charging  
21 document.

22 What remains in effect is that when you use  
23 force, you report that force and document it.

24 What remains in effect is police reports and  
25 probable cause affidavits are to be reviewed by

1 supervisors.

2 What remains in effect is Use of Force  
3 Reports are to be reviewed and investigated by -- by  
4 supervisors.

5 That has not changed.

6 And that never happened in any of these  
7 arrests.

8 Q. Can I finish my question?

9 A. And that is -- that is not consistent with  
10 widely accepted police practices.

11 Q. You indicated that you accept Mr. Burns'  
12 statement that his hair was pulled, he was slammed into  
13 the ground, a Mace-coated finger was placed in his ear,  
14 another police officer with Mace on his hand touched his  
15 private parts, and I guess you're saying that if that  
16 force was used, then of course a Use of Force Report  
17 should be prepared, but you understand the police  
18 officers testified that the County police officers used  
19 no force against Mr. Burns; the City Police Department  
20 put OC spray on him?

21 MR. LATTIMER: That's not true at all. That  
22 misstates the facts.

23 THE WITNESS: You started your long  
24 statement with I accepted those facts as reported  
25 by Burns.

1 I never said I accepted those facts.

2 Those facts remain in dispute --

3 BY MR. HUGHES:

4 Q. Okay.

5 A. -- because the police officers failed to  
6 document anything that -- failed to document the arrest,  
7 the probable cause and force.

8 Q. You read the police officers' testimony. You  
9 know they testified they used no force, the County  
10 police officers testified they used no force against  
11 him, correct?

12 A. I'll accept that's what --

13 Q. Okay.

14 A. -- they said.

15 Q. And if they used no force against him, then  
16 they're not required to do a Use of Force Report; is  
17 that correct?

18 A. Correct.

19 Q. But on whether or not force was used, were  
20 you furnished with the medical records of Mr. Burns at  
21 the Justice Center when he was seen by an intake nurse  
22 who took his history and physical?

23 A. I don't recall at this moment whether I did  
24 or not.

25 Q. Well, let me tell you that when you listed

1 earlier in your report everything that you reviewed, you  
2 did not list that you reviewed the medical records of  
3 Nathan Burns.

4 So am I to assume that you were not furnished  
5 those medical records?

6 A. If I did not list them in my report, then I  
7 did not review them.

8 Q. Okay.

9 A. Because I would have listed everything that I  
10 did review, unless it was included somewhere else where  
11 I missed it or bunched it together, but I don't recall  
12 reading medical reports and -- on Nathan Burns.

13 Q. So were you aware that Nathan Burns did not  
14 mention to the nurse that he was suffering any effects  
15 from Mace?

16 A. Am I aware or not aware?

17 Q. Are you aware?

18 A. That he did not mention. I'm not aware of  
19 the conversation, so I can't be aware of what he may or  
20 may not have said.

21 Q. So I mean, if the medical records indicate  
22 that he did not have any mention of the effects of Mace  
23 and he had no complaint of pain except for a backache  
24 but he said he had a recurrent problem in the lumbar  
25 area that he was seeing some other doctor for, would you

1 have any reason to dispute that?

2 A. If there's a -- I'm not sure how you're  
3 asking --

4 Q. Well -- well -- well -- well -- well, let me  
5 say this.

6 A. Go ahead.

7 Q. If it's true that he had no complaints of  
8 pain other than the backache that he was already getting  
9 treatment for and he had no complaints of the effects of  
10 Mace when he was seen by the intake nurse at the Justice  
11 Center after he was arrested, would that suggest to you  
12 that there was no force used against him except for the  
13 Mace, but with fresh air and time the Mace had even --  
14 you know, the effects were gone by then?

15 A. No.

16 MR. LATTIMER: That's beyond his expertise  
17 anyway.

18 BY MR. HUGHES:

19 Q. Tell us why the answer is no.

20 A. Because you're saying that because something  
21 is not included in the report, a medical report, that it  
22 didn't happen.

23 Of course it could have happened.  
24 Anything -- he could have told the nurse anything or a  
25 lot of things.

1 Q. All right.

2 A. But because she didn't record it, it doesn't  
3 mean it didn't happen.

4 So you're asking me to come to a conclusion  
5 that he didn't say something because it wasn't mentioned  
6 in the report.

7 What I can conclude is that it wasn't  
8 mentioned in the report.

9 That's all I can conclude.

10 Q. Are you going to give an opinion that there  
11 was not arguable probable cause to arrest Nathan Burns?

12 A. No. My opinions are going to be dealing  
13 with --

14 Q. That's fine.

15 A. -- the failure to articulate probable cause.

16 Q. But if an officer truly did pull him by the  
17 hair while he was not resisting and then put a finger in  
18 his ear with Mace and touched his private parts with  
19 Mace, then I guess your opinion is that would be  
20 excessive; is that correct?

21 A. Yes.

22 Q. Okay.

23 A. But back to whether there was probable cause  
24 or not, I'm going to -- what I'm saying is that there's  
25 a dispute of facts because of what Nathan Burns says

1       versus what the police officers say, and when the police  
2       officers say something through Menzenwerth eight months  
3       later --

4           Q.       Yeah?

5           A.       -- the credibility --

6           Q.       Well --

7           MR. LATTIMER: Let him finish. Let him  
8       finish.

9           THE WITNESS: -- the accuracy and the  
10       thoroughness is questioned --

11          MR. LATTIMER: Let him finish.

12          THE WITNESS: -- and that's a determination  
13       for the jury to decide who's credible.

14       BY MR. HUGHES:

15          Q.       I just don't want any surprises at trial and  
16       that's why I asked you if you would be giving an opinion  
17       and I'll accept the answer you just gave me --

18          A.       Okay.

19          Q.       -- regarding arguable probable cause.

20          MR. LATTIMER: The man's opinions are set  
21       forth in his report and they're very clear.

22          MR. HUGHES: Well, I need a little water,  
23       but I still have a little bit more to go, but I'd  
24       be happy to let Tom Plunkert talk about his  
25       people.

1 MR. PLUNKERT: Bob, Bob.

2 MR. HUGHES: Bob Plunkert. I'm thinking of  
3 his dad. Bob Plunkert.

4 MR. PLUNKERT: Why don't we take a short  
5 break.

6 (Thereupon, a recess was taken at 1:10 p.m.,  
7 after which the deposition continued at 1:50  
8 p.m.)

9 CROSS-EXAMINATION

10 BY MR. PLUNKERT:

11 Q. On the record, "pew" like a church pew is  
12 how you say "Pusins" and I will remember when it comes  
13 up.

14 Mr. Pusins, my name is Bob Plunkert.

15 I represent the City of Ferguson and Tom  
16 Jackson, Justin Cosma and the Maryland Heights police  
17 officers, which are Brandon McKinnon, Matt Delia and  
18 Ryan Devouton.

19 You're aware of that, correct?

20 A. Yes.

21 Q. And if I refer to the last three individuals  
22 that I named, is it okay to refer to them as the  
23 Maryland Heights police officers?

24 A. Yes.

25 Q. We were off the record making small-talk and



1 I was asking you for your position, because out of  
2 respect, I refer to officers in their rank.

3 You informed me that currently the position  
4 that you are serving with Broward County Sheriff's  
5 Department is a civilian position but has a comparable  
6 rank; is that right?

7 A. Yes.

8 Q. Okay.

9 A. So --

10 Q. Go ahead.

11 A. My rank is -- my position is Executive  
12 Director.

13 Q. So you said just to call you Bob, right?

14 A. Bob works well.

15 Q. I want to begin with -- I mean, as you know,  
16 the Defendants that I represent have kind of different  
17 incidents, so I'll try to take one incident at a time if  
18 that's okay with you.

19 A. Okay.

20 Q. I'll try to do the one that I believe will be  
21 far shorter first, which will be the Tracey White and  
22 William Davis claim.

23 A. Yes.

24 Q. Do you have a binder for them?

25 A. Yes.

1 Q. Do you mind if I mark that binder?

2 (Thereupon, Defendant's Exhibit C was marked  
3 for identification.)

4 BY MR. PLUNKERT:

5 Q. Sir, this binder that we've marked as  
6 Exhibit C is a binder in your file for this case that  
7 pertains to the arrests of Tracey White and William  
8 Davis, correct?

9 A. Yes.

10 Q. Now, we can bypass a lot of this work here.  
11 Earlier you had some questions regarding  
12 Justin Cosma.

13 Do you remember those questions?

14 A. Yes.

15 Q. I'm going to be pretty direct on these.  
16 In your thorough review of the case, at any  
17 point did you come across any evidence that Justin Cosma  
18 was involved in the arrest of either Tracey White or  
19 William Davis?

20 A. No.

21 Q. To a reasonable degree of certainty Justin  
22 Cosma was not involved in the arrest of William Davis or  
23 Tracey White, correct?

24 A. Correct.

25 Q. To a reasonable degree of certainty Justin

1 Cosma did not use any force against William Davis or  
2 Tracey White, correct?

3 A. Correct.

4 Q. Now, are you familiar with who Tom Jackson  
5 is?

6 A. Yes.

7 Q. You're aware that he has retired from the  
8 City of Ferguson Police Department as of around March of  
9 2015, correct?

10 A. Yes.

11 Q. Tom Jackson to a reasonable degree of  
12 certainty was not involved in the arrest of Tracey White  
13 or William Davis, correct?

14 A. He wasn't personally involved, correct.

15 Q. Okay. He did not use any force with respect  
16 to the arrests of William Davis and Tracey White,  
17 correct?

18 A. Correct.

19 Q. Now, you mentioned he was not present.  
20 Did Tom Jackson have any involvement at all  
21 in those arrests?

22 A. Oh, I believe he did.

23 Q. And what is that?

24 A. When I look at the deposition of Chief Belmar  
25 from the St. Louis County Police Department, he clearly

1 indicates in his deposition that Chief Jackson and him  
2 were incident commanders over the events that took place  
3 until Captain Johnson of the Missouri State Police was  
4 appointed by the Governor, I think it was on perhaps the  
5 14th.

6 So Chief Belmar takes the position that it  
7 was a joint command and, yes, Chief Jackson was involved  
8 and participated in the command of that response to the  
9 riots.

10 Q. And you have read Chief -- well, let's say  
11 Tom Jackson's deposition transcript, correct?

12 A. You know, I did not. I looked for it in the  
13 files and looked several times, and I did not come  
14 across it, so I did not -- I don't have a record of  
15 seeing or having that deposition.

16 Q. All right. You agree that if Tom Jackson  
17 spoke to the topic of that joint command, that it's  
18 something that is pertinent to that opinion that you  
19 just gave, correct?

20 A. Yes.

21 Q. And we'll use the word "joint command".  
22 That's something that Chief Belmar used, correct?

23 A. I believe so. I'm happy with that.

24 Q. And is that Chief Belmar's deposition that  
25 you have in front of you, sir?

1 A. It is.

2 Q. And I see you have some notes on it?

3 A. Yes.

4 Q. We can do this at any appropriate time and  
5 whatever fashion that you'd like, but I'd like to mark  
6 your file.

7 If that's a portion of a bigger folder, we  
8 can mark the bigger folder.

9 A. No.

10 Q. Okay.

11 A. This is his deposition with my notes attached  
12 underneath the cover.

13 MR. PLUNKERT: Can we mark this as Exhibit D,  
14 please?

15 MR. LATTIMER: The deposition?

16 MR. PLUNKERT: Yes.

17 THE WITNESS: It's a deposition transcript of  
18 Belmar.

19 MR. PLUNKERT: Which contains notes.

20 MR. LATTIMER: Why don't you just take the  
21 notes as opposed to the deposition? Why are we  
22 putting a deposition in another deposition?

23 MR. PLUNKERT: Because I'd like to and there  
24 are highlights.

25 - - -

1 (Thereupon, Defendant's Exhibit D was marked  
2 for identification.)

3 BY MR. PLUNKERT:

4 Q. Sir, I have just handed what we marked as  
5 Chief Belmar's deposition with your notes and your  
6 highlights as Exhibit D, correct?

7 A. Yes.

8 Q. I'll hand it back to you, but I'm flipping it  
9 to a certain page for your reference in answering the  
10 following questions.

11 And by the way, this exhibit is two-sided.

12 All right. And can you turn to Page 66?

13 A. Let me just do this first.

14 Q. Sure.

15 A. Yes.

16 Q. And I've noticed that you've highlighted a  
17 portion of Exhibit 66 where Chief Belmar is speaking of  
18 the joint command with Chief Jackson, correct?

19 A. Yes.

20 Q. Now, I noticed that you didn't highlight the  
21 question and answer immediately thereafter, unless I'm  
22 reading incorrectly and correct me if I'm wrong, where  
23 he speaks to -- thank you -- the very following line,  
24 19, the question is whether Chief Belmar was ultimately  
25 in charge, correct?

1 A. Yes.

2 Q. And he responds he is, correct?

3 A. Yes.

4 Q. Now, I want you to assume -- I know you  
5 haven't read Tom Jackson's deposition.

6 I want you to assume that Tom Jackson  
7 testified by joint command, he had indicated that Tom  
8 Jackson was Chief and in charge of certain areas of  
9 Ferguson while Chief Belmar -- and I'm speaking about  
10 before the 14th.

11 A. Yes.

12 Q. And after the 9th while Chief Belmar was in  
13 charge of the West Florissant area and the protests and  
14 the immediately surrounding areas. Okay?

15 A. Yes.

16 Q. Now, assuming that, I want you to -- well,  
17 this arrest of Tracey White and William Davis, that was  
18 off of West Florissant, correct?

19 A. Yes.

20 Q. And in the immediately surrounding areas,  
21 correct?

22 A. Yes.

23 Q. You agree that Chief Belmar was ultimately in  
24 control and in charge of that area, correct?

25 A. According to his own testimony, yes, but he

1 also says that's in joint command with Chief Jackson,  
2 but I understand that is what he says.

3 Q. With all that information, I'll ask you in  
4 your opinion who in the joint command, where does the  
5 buck stop?

6 Who is in charge of the area where Tracey  
7 White and William Davis were arrested?

8 A. I think I'm the wrong person to be asking  
9 who's ultimately in command.

10 Q. Okay.

11 A. We do have the testimony of Chief Belmar, who  
12 indicates there's a joint command, but then he talks  
13 about ultimate command.

14 I think the follow-up question could have  
15 been, "What exactly does that mean? What does it mean  
16 by ultimate person in this situation?" because that's  
17 what it says, "You're the ultimate person in this  
18 situation?"

19 It doesn't say, "You're the ultimate  
20 commander?"

21 It says, "You're the ultimate person?"

22 I don't really know what that means.

23 Q. So is it my understanding that you don't have  
24 enough information to answer that question and offer an  
25 opinion?



1 MR. LATTIMER: What question?

2 MR. PLUNKERT: The one that I just asked,  
3 sir. He was just answering it the first time.

4 THE WITNESS: What I answered earlier was  
5 that Chief Belmar testified that there was a joint  
6 command and Chief Jackson was part of that.

7 And Page 66, Line 14, we'll start at Line 11,  
8 the question was, "So during that period of August  
9 11th through the 14th you were the person in  
10 charge, right?" question mark.

11 He says answering, "I shared that  
12 responsibility with Chief Jackson."

13 And then he goes on to mention some others.

14 And then the follow-up question is, "Okay.  
15 But you were the ultimate person in this  
16 situation?"

17 I don't know what "ultimate person" is.  
18 There could be many meanings to that, so I don't  
19 want to conclude that that means that he's in  
20 charge because a second ago he said he shared  
21 responsibility.

22 BY MR. PLUNKERT:

23 Q. And it may very well be that you cannot  
24 render an opinion to a reasonable degree of certainty  
25 on this, and I just want to know if you can or you

1 can't.

2 So I'll ask you based on your review of the  
3 case and the files that were provided to you, do you  
4 have an opinion to a reasonable degree of certainty who  
5 was at the top of chain of command for the arrests of  
6 Tracey White and William Davis?

7 A. I -- I think I'm the wrong person to ask, so  
8 I would say that you would have to ask Chief Jackson and  
9 you would have to ask Chief Belmar, but according to  
10 what I'm reading here, Chief Belmar claims that he  
11 shared the responsibility.

12 Q. Okay.

13 A. So no, I can't tell you in certainty who was  
14 in charge.

15 I can only tell you what the Chief reported  
16 or testified to.

17 Q. With respect to those two arrests, Tracey  
18 White and William Davis, who was the final policymaker?

19 And if you're not familiar with the term,  
20 that's a term of law that comes from 1983.

21 Are you familiar with that?

22 A. Why don't you go ahead and explain it to me  
23 because I'm not an attorney and I wouldn't want to  
24 misinterpret a term of law.

25 Q. Well, we'll go with who is it at any

1 governmental entity, whether it be the County or the  
2 City of Ferguson, and if you don't know, again, just  
3 tell me you don't have an opinion on it and we can move  
4 on, who was the final policymaker regarding the arrests  
5 of Tracey White and William Davis?

6 A. I don't know for certain, but what I would  
7 offer is that if you have two Chiefs, one from the City  
8 of Ferguson and one from St. Louis County who are in  
9 joint command, that they're both responsible for the  
10 policies and the actions of the officers during that  
11 event.

12 Now, that's a layman's response.

13 A legal decision is beyond my scope of  
14 expertise.

15 Q. And again, that aspect of joint command and  
16 who's ultimately at the top of the chain, you just  
17 referenced you don't have an opinion as to that, right?

18 A. I'm saying according to Belmar, they're --  
19 they're both -- they shared responsibility and that's  
20 the language that he used, he shared that responsibility  
21 with Chief Jackson.

22 Q. Well, okay. And I thought you didn't have an  
23 opinion.

24 Do you have an opinion as to the joint  
25 command and who was ultimately in charge of that area?

1 A. Yes, I do have an opinion --

2 Q. Okay.

3 A. -- based on what Chief Belmar is stating, and  
4 he's stating that he shared the responsibility with  
5 Chief Jackson.

6 I can only accept what he says without any  
7 further information or questioning of Chief Belmar or  
8 questioning of Chief Jackson.

9 I -- I accept what he says, that it's a joint  
10 responsibility.

11 Q. Do you accept at least for those two areas  
12 what he says, that he was ultimately in charge?

13 A. No, 'cause I don't know what the ultimate  
14 person means.

15 It doesn't say he was ultimately in charge.

16 It says, "But were you the ultimate person in  
17 this situation?"

18 You're inferring that that's what it means.

19 I don't know if that's what it means or if  
20 that's what he's responding to.

21 Q. Do you --

22 A. It's more of a question for him than for me I  
23 would think.

24 Q. Well, if you're going to render opinions,  
25 it's a question for you.

1           Go ahead. I mean, what I'm trying to get at  
2       here is -- first of all, the word "ultimate" means last,  
3       correct?

4           MR. LATTIMER: Under whose definition?

5       BY MR. PLUNKERT:

6           Q. Well, we can pull out that dictionary if you  
7       want, but "ultimate" means last, doesn't it?

8           A. Perhaps. I'll take your word for it.

9           Q. Okay.

10          A. There's probably a number of definitions of  
11       "ultimate", but perhaps that's one of them.

12          MR. LATTIMER: I can assure you that  
13       "ultimate" doesn't mean last, and you can pull out  
14       whatever dictionary you want.

15       BY MR. PLUNKERT:

16          Q. We will.

17               Well, it just so happens that since we're at  
18       a court reporting office, we have a 10th edition of  
19       Merriam-Webster's Collegiate Dictionary; is that right,  
20       sir?

21          A. Yes.

22          Q. And you believe this to be an authoritative  
23       work on definitions of words, don't you?

24          MR. LATTIMER: Objection. This man is not  
25       here to testify about what is an authoritative book

1 on words.

2 BY MR. PLUNKERT:

3 Q. Subject to that, you may answer.

4 A. I'm not -- I will accept what's in the book,  
5 but I'm not an authoritative on dictionaries or words or  
6 say that this is the only source of definitions.

7 Q. And excuse my reach. I'm just trying to keep  
8 the place.

9 And if you can read the first definition of  
10 "ultimate".

11 A. Farthest, comma, last, final.

12 Q. Last, final, right?

13 A. Do you want me to keep this open?

14 Q. No. That's okay. That's all we need.

15 You would agree that last, final, those are  
16 definitions for "ultimate", correct?

17 A. Yes.

18 Q. You agree that Chief Belmar said he was  
19 ultimately in charge of the area, correct?

20 MR. LATTIMER: He's answered that four times  
21 and he's read to you that Chief Belmar never said  
22 that. Chief Belmar never said that.

23 Are you going to keep asking the same thing  
24 here?

25 - - -

1 BY MR. PLUNKERT:

2 Q. Subject to that, you may answer.

3 MR. LATTIMER: The last time, one more time,  
4 read to him what it says.

5 THE WITNESS: I go back to Line 14.

6 BY MR. PLUNKERT:

7 Q. I'm asking about 19.

8 MR. LATTIMER: No, no. Let him finish. You  
9 said answer the question.

10 If you want to keep asking this same old  
11 question, then let him answer the question the way  
12 he wants to answer the question again.

13 BY MR. PLUNKERT:

14 Q. Sir, is it true that Chief Belmar said,  
15 "Okay. But you were the ultimate person in the  
16 situation?"

17 He responded, "I was, yes."

18 A. That's what the --

19 MR. LATTIMER: He's read that four times.

20 BY MR. PLUNKERT:

21 Q. Okay.

22 A. That's what the transcript says.

23 Q. Do you disagree with that line of his?

24 A. I don't disagree that it's here. I don't  
25 have a complete understanding of any conversations that

1 he may have had with Chief Jackson regarding the shared  
2 responsibility that he mentioned on Line 14, so I don't  
3 know what he's meaning by saying, "You're the ultimate  
4 person?"

5 I don't know what he's trying to say, but  
6 what I am agreeing with is that -- what it says.

7 Q. Okay.

8 A. But you're asking me to interpret his  
9 meaning, and that's what I'm saying, I can't do that.

10 Q. You agree that Tom Jackson's testimony may  
11 fill in the blanks where that line is concerned?

12 A. From Tom Jackson's point of view, it could,  
13 potentially.

14 Q. And from the joint command definition that  
15 those two had worked out?

16 A. From Chief Jackson's point of view, perhaps,  
17 but I don't know if that syncs with what Chief Belmar is  
18 saying or was thinking.

19 Q. All right. Well, I want you to read Page 107  
20 of Tom Jackson's transcript that I have here on my  
21 computer.

22 A. Okay.

23 Q. And I can pull it over to you.

24 A. Can I scroll down?

25 Q. Of course.



1 A. Okay.

2 Q. Have you read that fully, sir?

3 A. Yeah, but don't take it away. I need to --

4 Q. I do too.

5 Do you agree in the West Florissant protest  
6 area, the highest ranking officer on the site was  
7 Lieutenant Colonel Dierkes who reported to Chief  
8 Belmar?

9 MR. LATTIMER: Objection. How would he know  
10 that?

11 MR. PLUNKERT: He just read Tom Jackson's  
12 deposition.

13 MR. LATTIMER: Are you asking what he read or  
14 what he knows?

15 MR. PLUNKERT: After he's read it, I'm asking  
16 what he knows.

17 MR. LATTIMER: How could he know that?

18 BY MR. PLUNKERT:

19 Q. Subject to that objection, sir, you may  
20 answer.

21 A. What Chief Jackson says is that the  
22 Lieutenant Colonel was in charge. Show it back to me.

23 Q. Of course. Of course.

24 A. And that he would -- according to Chief  
25 Jackson, the highest ranking officer in that area would

1 have been Lieutenant Colonel Dierkes, D-I-E-R-K-E-S.

2 And he would report to Chief Belmar. That's  
3 what Jackson says.

4 Q. And you hadn't read that before today,  
5 correct?

6 A. No, I don't recall seeing that.

7 Q. You don't have any reason to dispute this or  
8 give an opinion against the credibility of Tom Jackson  
9 when he says that, do you?

10 A. No.

11 Q. Do you accept that to be true?

12 A. I accept that that's his opinion that he  
13 articulated in the deposition. I don't know whether it  
14 was true or not.

15 Q. And maybe I can wind it down this way.

16 You don't have any opinions regarding who was  
17 ultimately in charge in the area where Tracey White and  
18 William Davis were arrested, correct?

19 MR. LATTIMER: He's answered that question  
20 five times.

21 THE WITNESS: My opinion is that according to  
22 Chief Belmar, there's a joint command.

23 According to Chief Jackson, St. Louis County  
24 is responsible for a certain area and Ferguson is  
25 responsible for a different area, but they're still

1 joint command, and I don't know that because they  
2 separated areas where the police officers are going  
3 to be.

4 That responsibility separated also when you  
5 have a joint command.

6 BY MR. PLUNKERT:

7 Q. And so do you have an opinion as to who was  
8 ultimately in charge?

9 A. They're both in charge is -- is -- based on  
10 what Chief Belmar says, they're both in charge, so I  
11 wasn't there. I didn't have conversations with them.

12 I can only garner what each of them said, so  
13 if Belmar says they're both in charge, I'm going -- I'm  
14 accepting that.

15 Q. Let me offer it this way.

16 Can't there be joint command of a  
17 municipality with different geographical areas having a  
18 different person at the top of the chain?

19 A. Yes.

20 Q. Isn't it true that's what happened here with  
21 St. Louis County and the City of Ferguson?

22 A. I don't know whether it was true or not  
23 because Belmar takes the position that there's joint  
24 command.

25 Q. Correct.

1 Who was ultimately in charge of the Ferguson  
2 Police Department in that area?

3 MR. LATTIMER: Six times you've asked the  
4 same question.

5 BY MR. PLUNKERT:

6 Q. The Ferguson Police Department in that area.  
7 That's not at this page right here.

8 A. Okay. It's difficult for me to answer that  
9 question.

10 The question should be posed to the two  
11 people that were in charge. That's Belmar and Jackson.

12 I can only refer to Belmar's testimony where  
13 he claims it's a joint command.

14 Q. Okay.

15 A. I'm accepting that.

16 What else can I do other than say, "Chief  
17 Belmar, you're wrong."

18 He's saying there's a joint command.

19 Q. No. I'm not asking you to say, "Chief  
20 Belmar, you're wrong."

21 I'm just trying to have you reconcile the  
22 19th line, the 19th and 20th lines with the previous  
23 lines that you mentioned joint command.

24 MR. LATTIMER: He's an expert witness. He's  
25 not here to reconcile anything.

1 All he can do is tell you what information he  
2 has.

3 He's not opining about who had ultimate  
4 command.

5 All he's opining about is that these were the  
6 two people who were in charge.

7 These are the two people who had established  
8 policy and these are the policies that were  
9 deficient and this is why.

10 His job is not to reconcile whether it was  
11 one or the other.

12 BY MR. PLUNKERT:

13 Q. Well, sir, then you aren't here to render an  
14 opinion as to who the final policymaker was with respect  
15 to the arrest of Tracey White and William Davis,  
16 correct?

17 MR. LATTIMER: Final policymaker -- first of  
18 all, you're talking about something that's not  
19 involved --

20 MR. PLUNKERT: Make a form objection. We  
21 need to move this along and all you're doing is  
22 making speaking objections.

23 MR. LATTIMER: You keep asking him the same  
24 questions over and over again and you're talking  
25 about a policymaker.

1           A final policymaker is not the ultimate  
2           person necessarily.

3           In other words, you could have a Mayor --

4           MR. PLUNKERT: Now this is coaching the  
5           witness. This is coaching the witness.

6           MR. LATTIMER: You can have a Chief of Police  
7           who's a final policymaker. That doesn't mean  
8           anything.

9           MR. PLUNKERT: Stop, stop. This is an  
10          improper objection under the Rule 30.

11          MR. LATTIMER: What's improper is everything  
12          you're doing.

13          You're asking an expert about reconciling  
14          testimony.

15          MR. PLUNKERT: At this point I'm --

16          MR. LATTIMER: How crazy is that?

17          MR. PLUNKERT: -- putting you on notice that  
18          I am going to ask for relief if you do not keep  
19          your brief, concise objections pursuant to Rule 30,  
20          because if you say anything more, this witness will  
21          hear you and that could affect the testimony.

22          MR. LATTIMER: Don't threaten me. Don't  
23          threaten me.

24          BY MR. PLUNKERT:

25          Q.       Subject to that, sir --

1 MR. LATTIMER: Do not threaten me, and before  
2 you -- if you want to threaten me, you might as  
3 well go ahead and do what you got to do because you  
4 can assure yourself that once you start threatening  
5 me, this is going to take a whole different  
6 position, but don't threaten me.

7 BY MR. PLUNKERT:

8 Q. Subject to that objection, you may answer.

9 A. Can you repeat the question?

10 Q. Sir, you don't have an opinion as to who the  
11 final policymaker was with respect to the arrests of  
12 Tracey White and William Davis?

13 MR. LATTIMER: He's not here to opine about  
14 final policymakers.

15 MR. PLUNKERT: I'm asking him.

16 MR. LATTIMER: And I'm telling you what he's  
17 here to opine about.

18 MR. PLUNKERT: Are you telling him how to  
19 answer?

20 MR. HUGHES: Just make an objection and he'll  
21 answer.

22 MR. LATTIMER: One more time, you ain't got  
23 nothing to do with this. This ain't your witness.

24 BY MR. PLUNKERT:

25 Q. You may answer, sir.

1 A. I'm trying to pose my response.

2 What I know is from the deposition of Chief  
3 Belmar, and he says it's a joint command.

4 What you showed me was that Chief Jackson  
5 says it's a joint -- I think he said it was a joint  
6 command too but they had different areas of  
7 responsibility.

8 So I'm going to -- if you are -- if you're  
9 asking me for an opinion, they're both in charge.

10 I don't know what else I can tell you. They  
11 admitted that there's a joint command.

12 Q. I'm asking final policymaker, not in charge,  
13 right now for this question.

14 So is that your response for who's the final  
15 policymaker?

16 MR. LATTIMER: Calls for a legal conclusion.  
17 BY MR. PLUNKERT:

18 Q. You may answer.

19 MR. LATTIMER: To the extent you can.

20 THE WITNESS: I'm not sure what you mean by  
21 "final policymaker".

22 BY MR. PLUNKERT:

23 Q. Who arrested Tracey White?

24 A. Police officers.

25 Q. With which jurisdiction?



1 A. St. Louis County Police Department.

2 Q. Do you recall what officers?

3 A. Yes.

4 Q. Okay.

5 A. David Ryan, McCoy, Murphy, McCann. These  
6 were the police officers that were involved in that  
7 situation.

8 Q. Did you watch the video of the arrest?

9 A. I did not.

10 Q. Did you know that there were St. Charles  
11 police officers around?

12 A. Yes.

13 Q. But your opinion is that it was -- well, let  
14 me ask you this: Did a St. Charles police officer  
15 actually handcuff Tracey White?

16 A. I don't believe so.

17 MR. LATTIMER: Relevance, materiality.

18 BY MR. PLUNKERT:

19 Q. Now, do you have any evidence that those  
20 St. Louis County officers that you just named were  
21 familiar with any City of Ferguson Police general order  
22 or policy?

23 A. I don't know.

24 Q. You don't know whether the City of Ferguson  
25 had any policies which were any sort of motivating

1 factor behind those County officers, do you?

2 A. I don't know what that question means. Can  
3 you rephrase that?

4 Q. Sure. Well, if those St. Louis County  
5 officers weren't aware of the City of Ferguson general  
6 orders, you would agree with me, right?

7 A. I don't know whether they were or not.

8 Q. Then you don't know if somehow the general  
9 orders of the City of Ferguson had any impact on that  
10 arrest whatsoever, do you?

11 A. Correct.

12 Q. All right. Now, when you cite to the DOJ  
13 Report in your report, what did the City of Ferguson  
14 policies and procedures have to do with any of the  
15 arrests in this case?

16 A. They weren't involved in the arrests. It was  
17 St. Louis County that was involved in the arrests, but  
18 there was still a joint command, so I don't know the  
19 answer to that question as to what influence or  
20 direction may have come out of that joint command from  
21 Ferguson. I -- I don't know.

22 Q. And you're aware the DOJ had critiques of the  
23 policies and procedures of the City of Ferguson,  
24 correct?

25 A. Yes.

1 Q. And as you sit here today to a reasonable  
2 degree of certainty, you're unable to say whether any of  
3 those policies and procedures had any influence at all  
4 on any of the arrests that are at issue in this  
5 lawsuit?

6 A. Yeah, I'm not pointing to any policy or  
7 procedure.

8 Q. And you're not aware of whether Tom  
9 Jackson -- let me ask you this: Did Tom Jackson have to  
10 get consent from the City Manager to pass any general  
11 order?

12 A. I don't know whether he did or not.

13 Q. Do you know if Tom Jackson passed all of the  
14 policies and procedures that were in place on August 9th  
15 of 2014 with the City of Ferguson?

16 MR. LATTIMER: Objection as to relevance and  
17 materiality.

18 THE WITNESS: If Tom Jackson passed them?

19 BY MR. PLUNKERT:

20 Q. If he was the one who authored them.

21 MR. LATTIMER: Objection as to relevancy and  
22 materiality.

23 THE WITNESS: No, I don't know that he  
24 authored them.

25 - - -

1 BY MR. PLUNKERT:

2 Q. Okay.

3 A. But when policies and procedures are produced  
4 by law enforcement agencies, it's ultimately the -- the  
5 Chief, if you will, in this case who's -- who's  
6 approving it and responsible for those policies and  
7 procedures.

8 Q. Are you familiar with the City of Ferguson  
9 ordinances and City Code with respect to the duties of  
10 the City Manager, the duties of the City Council and the  
11 duties of the Police Chief?

12 MR. LATTIMER: Objection as to relevance and  
13 materiality.

14 THE WITNESS: No.

15 BY MR. PLUNKERT:

16 Q. Are you familiar with any general order of  
17 the City of Ferguson?

18 A. Not off the top of my head unless it's  
19 something that was in the DOJ Report where they talked  
20 about general orders, no.

21 Q. Did you read Menzenwerth's deposition  
22 transcript?

23 A. Yes.

24 Q. Do you have it with you?

25 A. I do not.

1 Q. That's okay. I do.

2 And you are free to look at this Page 2,  
3 sir.

4 I know we're working on one copy, so I don't  
5 want you to think I'm keeping it from you. Okay?

6 A. Yes.

7 Q. Let me ask you, sir, I know you have read it  
8 once before, but I'd like to refresh your recollection,  
9 if you go to Page 70, read 70 and 71, if you would.

10 A. Start at the top of 70 or --

11 Q. Sure. They kind of drag into the  
12 conversation about joint command and you'll see where it  
13 picks up.

14 MR. LATTIMER: 70?

15 THE WITNESS: This is 70. Do you want me to  
16 go into 72?

17 BY MR. PLUNKERT:

18 Q. Unless there's more discussion -- it's all  
19 about the joint command obviously, so without having it  
20 in front of me, wherever it stops.

21 A. Okay. Okay.

22 Q. Do you recall reading that testimony that was  
23 on Pages 70 through 72?

24 A. Yes.

25 Q. Do you agree that that testimony is

1 consistent with the concepts of a joint command, that  
2 St. Louis County was in charge of the areas of West  
3 Florissant and the protesting in the immediately  
4 surrounding areas while the City of Ferguson was in  
5 charge of the remainder of the City of Ferguson, right?

6 A. According to Menzenwerth, yes, that's his  
7 testimony.

8 Q. Do you disagree with any of his testimony on  
9 this topic?

10 A. Again, I go back to the statement of Chief  
11 Jackson that says that there's a joint command and the  
12 question of who is ultimately responsible or what the  
13 joint command consisted of should be referred to Chief  
14 Jackson and Chief Belmar.

15 You're asking me to reach an opinion or a  
16 conclusion regarding joint command based on limited  
17 testimony in a deposition when we know in reality this  
18 extensive conversation is about joint command and that's  
19 not included in the testimony, so I can only base it on  
20 what Belmar said.

21 If there's more to it, they have to answer  
22 that and clarify that.

23 Q. Do you recall reading Sergeant Ryan's  
24 deposition testimony on this topic?

25 A. I recall reading his deposition. I don't

1 recall specifically on this topic, but we can go to it.

2 Q. Do you recall reading Officer Mundy's  
3 testimony on this topic?

4 A. He's a Sergeant, Sergeant Mundy.

5 Q. Sergeant, yes.

6 A. Yes, I do recall reading his deposition, but  
7 I don't have an independent recollection of the  
8 discussion on this particular topic.

9 Q. Do you have any evidence that any of the  
10 officers that arrested Tracey White or William Davis  
11 reported to any officer with the City of Ferguson,  
12 including Tom Jackson?

13 MR. LATTIMER: Objection as to relevance and  
14 materiality.

15 THE WITNESS: The only evidence that I would  
16 point to is Tom -- Chief Belmar's statement that  
17 it's a joint command.

18 There's no evidence that they reported to  
19 anybody in specific command for the City of  
20 Ferguson other than joint command with Chief  
21 Jackson being co-commander with Belmar.

22 BY MR. PLUNKERT:

23 Q. And I understand you're speaking in a  
24 generality.

25 I'm asking do you have any specific evidence

1 that any of the arresting officers with respect to  
2 Tracey White and William Davis relayed any information  
3 on this arrest to Tom Jackson or a City of Ferguson  
4 officer?

5 A. No.

6 Q. Do you have any evidence that any of the  
7 arresting officers on -- and I'm talking about now all  
8 of the Plaintiffs in this lawsuit, if any of those  
9 arresting officers ever reported that arrest to an  
10 individual with the City of Ferguson including Tom  
11 Jackson?

12 A. No.

13 Q. Okay.

14 A. I'm not -- there's no evidence that I've  
15 seen. That's all I can report on.

16 Q. Where was Justin Cosma when Tracey White and  
17 William Davis were arrested?

18 A. I don't remember. We can look in his  
19 deposition and see what he said, but I don't have an  
20 independent recollection other than to recall that he  
21 was not involved with the arrest.

22 Q. Do you recall that he was involved in the  
23 arrest of a reporter at the McDonald's?

24 A. I remember the reporter being arrested, and  
25 if Cosma was involved, I don't dispute that.



1 Q. You read William Davis' and Tracey White's  
2 deposition testimony, correct?

3 A. Yes.

4 Q. You remember that they said that Justin Cosma  
5 wasn't involved in their arrest, correct?

6 A. Again, we know that there was 20 some odd  
7 depositions that were taken, and you're asking me if I  
8 have a specific recollection of a statement about  
9 Cosma.

10 I don't have a specific recollection, but if  
11 you're -- I don't dispute that he was not involved with  
12 the arrest.

13 Q. Is there any reason -- I think I know the  
14 answer to this -- is there any reason to believe that  
15 Justin Cosma was involved in their arrest?

16 A. No.

17 Q. Do you recall this lawsuit being published in  
18 the papers?

19 A. No.

20 Q. Are you aware of how much money the  
21 Plaintiffs are requesting from a jury?

22 MR. LATTIMER: Objection as to relevance and  
23 materiality.

24 THE WITNESS: I think the Complaint indicated  
25 1.5 million per count, so perhaps three million per

1 Plaintiff, but I do recall reading it in the  
2 Complaint, but I don't have -- didn't memorize it.

3 BY MR. PLUNKERT:

4 Q. To your knowledge did Tom Jackson have any  
5 specific involvement by being present in any of the  
6 arrests of any of the individuals in the lawsuit?

7 A. No.

8 Q. Okay.

9 A. Being present?

10 Q. Yes.

11 A. No, he was not present during any of the  
12 arrests.

13 Q. Are you aware of any orders of Tom Jackson  
14 that weren't contained in general orders that any  
15 officers followed in this lawsuit?

16 A. No.

17 Q. Let's turn our attention to the second of the  
18 two, sir, and that would be the Theophilus Green and  
19 Damon Coleman arrests. Okay?

20 A. Yeah.

21 Q. Do you mind if we mark that binder of your  
22 folder as E?

23 A. I don't mind.

24 (Thereupon, Defendant's Exhibit E was marked  
25 for identification.)

1 BY MR. PLUNKERT:

2 Q. Sir, you've just placed an exhibit sticker,  
3 E, on your binder, correct?

4 A. It's -- it's on the lower left corner,  
5 right.

6 Q. Yes. And these are your working notes and  
7 documents that you have received that you attribute to  
8 these two arrests, correct?

9 A. These are my working notes and documents that  
10 were printed and included in these -- in this binder,  
11 yes.

12 Q. You agree that these three Maryland Heights  
13 police officers that we've referenced before that are  
14 involved in this arrest did not arrest any other  
15 individuals for the period of unrest other than  
16 Theophilus Green and Damon Coleman, right?

17 MR. LATTIMER: Objection. How would he  
18 possibly know that?

19 BY MR. PLUNKERT:

20 Q. Subject to that --

21 A. Initially that was their testimony.

22 Q. Yes.

23 MR. HUGHES: Can I look at this for a  
24 minute?

25 THE WITNESS: (The Witness complied.)

1 MR. HUGHES: Thank you, sir.

2 BY MR. PLUNKERT:

3 Q. Earlier I believe you mentioned a couple  
4 comments about Florida law, and obviously we're  
5 discussing Ferguson ordinances and the State of  
6 Missouri statutes with respect to Missouri law,  
7 correct?

8 A. Yes.

9 MR. LATTIMER: Objection. This is not a case  
10 based upon Missouri law or statutes. This is based  
11 upon Federal constitutional law.

12 BY MR. PLUNKERT:

13 Q. Sir, you agree that probable cause to commit  
14 a crime, the crime can be defined by a state or by a  
15 municipality, can't it?

16 A. Yes.

17 Q. Now, failure to disperse was the charge for  
18 which these individuals Damon Coleman and Theophilus  
19 Green were arrested, right?

20 A. Yes.

21 Q. You agree in order to have arguable -- well,  
22 Mr. Lattimer pointed out that the Constitution is  
23 something that's at issue in this case, correct?

24 A. Yes.

25 Q. You're familiar with the Fourth Amendment,

1 correct?

2 A. Yes.

3 Q. You're familiar that an arrest must be  
4 supported by arguable probable cause, correct?

5 A. Yes.

6 MR. LATTIMER: Objection. What does  
7 "arguable" mean?

8 BY MR. PLUNKERT:

9 Q. Now, sir, you also agree that probable  
10 cause -- let me ask you this: Assault on a police  
11 officer is a crime in Ferguson is, correct?

12 A. I would assume so.

13 Q. You agree that throwing an object at an  
14 officer would constitute assault on a law enforcement  
15 officer, correct?

16 A. Perhaps in Ferguson or in Missouri, but in  
17 Florida it would be considered a battery.

18 Q. Okay. Both -- all of which are crimes,  
19 correct?

20 A. Yes.

21 Q. Now, you've served as an officer and you've  
22 probably made countless arrests, correct?

23 A. Yes.

24 Q. In making your arrests, some of the arrests  
25 that you have made at least have been based upon

1 information that you've received from other individuals,  
2 correct?

3 A. Yes.

4 Q. In other words, you will formulate probable  
5 cause statements in your jurisdiction sometimes based  
6 upon things that you did not personally observe,  
7 correct?

8 A. Yes.

9 Q. That's something that officers do frequently  
10 in the course of arresting suspects, correct?

11 A. Yes.

12 Q. And you believe that it's reasonable for  
13 officers to rely on reports of officers and certain  
14 witnesses in doing so, correct?

15 A. Yes.

16 Q. Do you know what the elements are for failure  
17 to disperse?

18 A. I believe I do.

19 Q. What are they?

20 MR. LATTIMER: Objection as to relevance and  
21 materiality.

22 THE WITNESS: Again, I'm not an attorney.  
23 I'm not -- I don't practice law in -- in Missouri,  
24 but for failure to disperse it has to be six or  
25 more people who are engaged in a criminal activity

1 and refuse to disperse.

2 BY MR. PLUNKERT:

3 Q. And there needs --

4 A. Something in that general statement.

5 Q. Okay. And I think what you're referring to  
6 might be what's called an unlawful assembly, right?

7 Tell me what an unlawful assembly is under  
8 Missouri law.

9 A. Again, I'm not going to try to guess what it  
10 is.

11 I'll accept your definition of what unlawful  
12 assembly is.

13 I'm not going to guess because I'm not a  
14 lawyer.

15 Q. Well, you're familiar with Lieutenant Delia's  
16 testimony; you read that, correct?

17 A. I read it, yes.

18 Q. And you agree that at one point in time  
19 St. Louis County determined that an unlawful assembly  
20 had taken place, correct?

21 A. I don't have any information to dispute  
22 that.

23 Q. And you agree at that point in time they  
24 informed Lieutenant Delia that an unlawful assembly was  
25 present and to clear the area, correct?

1 A. I believe so.

2 Q. And you believe it was reasonable for  
3 Lieutenant Delia to rely on that information from  
4 St. Louis County in reporting that an unlawful assembly  
5 had taken place, correct?

6 A. Yes.

7 Q. Now, you also agree that if an individual in  
8 the unlawful assembly was seen with a hand throwing  
9 motion, you agree that that supports a possible assault  
10 on a law enforcement officer, correct?

11 A. Well, it would depend on where the motion  
12 is -- how the motion is made, where the motion is  
13 directed, what's in the hand.

14 So there's some possibilities there, and one  
15 of the possibilities is that it would be, in my term, a  
16 battery on an officer.

17 Q. I want you to assume that the hand throwing  
18 motion was toward a law enforcement officer or a group  
19 of law enforcement officers, okay?

20 A. Yes.

21 Q. And assuming that, you agree that in order to  
22 arrest an individual on that, you don't have to  
23 actually see what the object is that is being thrown,  
24 correct?

25 A. I don't think it's a violation of any statute



1 or law or ordinance that a throwing motion is a  
2 violation, so I don't think that is sufficient probable  
3 cause to make an arrest.

4 Q. And in your work as an expert and in law  
5 enforcement, are there any treatises or authoritative  
6 works on which you rely with respect to probable cause  
7 and excessive force?

8 A. No.

9 Q. So is there any supportive material that  
10 supports what you just said there?

11 MR. LATTIMER: What?

12 THE WITNESS: Can you tell me what I just  
13 said?

14 BY MR. PLUNKERT:

15 Q. Sure. About just a motion not being enough  
16 to support a probable cause finding.

17 A. A motion by itself would not cause a  
18 reasonable police officer to assume that a battery or an  
19 assault just took place.

20 Q. You agree that Theophilus Green and Damon  
21 Coleman were instructed to disperse and clear the area,  
22 correct?

23 A. I believe they indicated that they may have  
24 been, and they also indicated that they -- they couldn't  
25 because they were blocked in.

1 Q. Have you watched the video?

2 A. No.

3 Q. You in the files that you have in this case  
4 have not watched the cell phone video of Damon Coleman  
5 capturing the encounter with the Maryland Heights police  
6 officers; is that right?

7 A. That's right.

8 Q. Do you think that's important in rendering an  
9 opinion that you review it?

10 MR. LATTIMER: Opinion about what?

11 MR. PLUNKERT: In this case.

12 THE WITNESS: Well, I don't know what's on  
13 the video, so I can only offer an opinion, and the  
14 opinions that I offered were based on the  
15 information and materials that was provided to me.

16 So you're now asking me if -- if there's  
17 something else that would be important.

18 Well, I don't know what's on it, so it's hard  
19 for me to answer that question.

20 BY MR. PLUNKERT:

21 Q. How long did it take for Theophilus Green and  
22 Damon Coleman to attempt to leave pursuant to the  
23 command?

24 A. I don't know. I don't remember.

25 Q. You agree that the crime of failure to

1 disperse can -- and all of the elements can be met at  
2 one point in time and then later the individuals may  
3 decide to leave but there's still probable cause to  
4 arrest on the initial failure to leave, correct?

5 A. That's a legal conclusion and I don't dispute  
6 it, but that's -- again, that calls for a legal  
7 conclusion that I'm not qualified to answer.

8 Q. Well, you're an officer that's opining about  
9 probable cause to arrest for crimes being committed,  
10 aren't you?

11 A. Yes.

12 Q. And I'm asking you as an expert if you have a  
13 situation where an individual is part of an unlawful  
14 assembly and does not disperse pursuant to commands and  
15 it takes time for the officers to get to those  
16 individuals and then late in the game the individuals  
17 want to get away, they have still committed the crime at  
18 the first instance of failure to disperse; wouldn't you  
19 agree?

20 MR. LATTIMER: Are you asking him to assume  
21 those facts?

22 MR. PLUNKERT: No facts. I think that's a  
23 hypothetical.

24 MR. LATTIMER: Okay. That's what  
25 hypotheticals do, assume facts.

1 THE WITNESS: So the police officers see an  
2 unlawful -- unlawful assembly and an order is given  
3 and the police officers confirm that those within  
4 the crowd heard the unlawful order and did not  
5 comply, could they eventually arrest them for that  
6 violation? Is that your question?

7 BY MR. PLUNKERT:

8 Q. Yes, sir.

9 A. The answer is yes.

10 Q. And that is to say that the officers have to  
11 use a megaphone to give that command and it takes, let's  
12 say, let's just assume a minute for the officers to  
13 actually get up to a distance where you can place  
14 handcuffs on the individuals and those individuals then  
15 say, "I'm going to leave," you agree that the crime has  
16 already been committed of failure to leave, correct?

17 MR. LATTIMER: It calls for a legal  
18 conclusion.

19 BY MR. PLUNKERT:

20 Q. Failure to disperse I should say. Go ahead.

21 A. We would have to confirm that the people who  
22 were arrested heard the command to leave, that they had  
23 an opportunity to leave, and if they did not leave, an  
24 arrest could be made subsequent to that time.

25 Q. If you assume that they heard it and that

1 they had the opportunity, with those assumptions, you  
2 would agree that that would be a proper arrest for  
3 failure to disperse, correct?

4 A. If you -- I'm trying to work through your  
5 qualification of proper arrest. Would that be a lawful  
6 arrest or what are you trying to assume?

7 Q. Supported by arguable probable cause, sir.

8 A. It could be, yeah.

9 Q. Did you read Antonio French's deposition  
10 transcript?

11 A. Did I?

12 Q. You know that he was in the same parking lot  
13 as Theophilus Green and Damon Coleman, correct?

14 A. Yes.

15 Q. You agree that there were six or more  
16 individuals in that parking lot, correct?

17 A. There may have been six or more individuals  
18 in the parking lot. I don't believe that the people  
19 that we're talking about were with those six or more,  
20 but they may have been present when others were there,  
21 and I'm not sure of how close they were or what they  
22 were all doing.

23 Q. And you recall Antonio French heard the  
24 commands that were given to Theophilus Green and Damon  
25 Coleman to disperse and leave the area, correct?

1 A. I don't dispute that.

2 Q. You agree that Antonio French had the  
3 opportunity to leave the area, correct?

4 A. I don't recall his testimony, whether he had  
5 the opportunity to leave or whether he was boxed in in  
6 some fashion. I don't recall specifically.

7 Q. Did you view the portion of Antonio French's  
8 vehicle that he shot outside of his car as he was  
9 leaving the area?

10 MR. LATTIMER: Are you asking about a video?

11 MR. PLUNKERT: Yes, sir.

12 THE WITNESS: I didn't see any videos.

13 MR. LATTIMER: I thought he's already told  
14 you that.

15 BY MR. PLUNKERT:

16 Q. Well, it's a different video. Have you seen  
17 any videos in this case?

18 MR. LATTIMER: None.

19 THE WITNESS: I have not seen any videos in  
20 this case.

21 BY MR. PLUNKERT:

22 Q. Do you have any opinions that the Maryland  
23 Heights officers made an unlawful arrest of either Damon  
24 Coleman or Theophilus Green?

25 A. No. I don't have an opinion about that

1 because it goes to the same argument or opinion that I  
2 offered before, that the Maryland Heights police  
3 officers did not complete a police report, did not  
4 articulate probable cause and it wasn't articulated  
5 until eight months later, six to eight months later by  
6 Menzenwerth.

7 So again, we're in that same dispute of facts  
8 where you have the Plaintiffs, Mr. Green and  
9 Mr. Coleman, saying this is what happened and you have  
10 the police officers saying something different but  
11 through Menzenwerth eight months later.

12 Q. Okay.

13 A. And when we have that kind of a delay in  
14 reporting, it raises questions about credibility,  
15 accuracy and thoroughness of the reports, which is why  
16 police officers complete reports contemporaneously with  
17 the action that they take.

18 That's the standard of care. That's the  
19 widely accepted police practice, and they didn't do that  
20 in this case.

21 Q. And I want to ask you some questions about  
22 what you just went through.

23 And so I understand, I think you answered my  
24 question, so I understand it, you do have those  
25 opinions, but specifically with respect to whether the

1 three officers had probable cause at the time of the  
2 arrests, you don't have opinions as to that, correct?

3 A. I didn't look at this case to form those  
4 opinions.

5 Q. Sure.

6 A. I looked at this case to see whether the  
7 practice -- the police practices that they followed were  
8 consistent with widely accepted practices.

9 I didn't get into trying to make a  
10 determination if probable cause existed or did not exist  
11 because we have a conflict of testimony, a conflict  
12 between the Plaintiffs and the officers, which is  
13 further aggravated by the delay in reporting, which in  
14 my estimation adds to the -- the credibility and  
15 thoroughness and accuracy of the police officers.

16 Q. Were there any less lethal munitions that  
17 the three Maryland Heights officers had on them that  
18 day?

19 A. I don't recall. We'd have to go through  
20 their specific depositions to see what they reported.

21 Q. And maybe I'll do it this way.

22 As you sit here you cannot recall any  
23 evidence that supports that any of the three Maryland  
24 Heights officers fired any less lethal munitions at  
25 either Theophilus Green or Damon Coleman, correct?



1 A. No.

2 Q. Not correct?

3 A. No, you're correct.

4 Q. I am correct. All right. I'm not pulling  
5 one on you.

6 I haven't heard any evidence that they've  
7 been armed with any less lethal munitions.

8 I just want to make sure your understanding  
9 is consistent with mine. Fair?

10 A. Yes.

11 Q. Okay. And again, understanding what you just  
12 said about probable cause, I believe it's the same way,  
13 you're not rendering any opinions with respect to  
14 whether any of the three Maryland Heights police  
15 officers used force that was excessive on either  
16 Theophilus Green or Damon Coleman, correct?

17 A. Correct.

18 Q. Now let's talk about what you did formulate  
19 now that we have those two out of the way.

20 You mentioned there was a delay in report  
21 writing, correct?

22 A. Yes.

23 Q. When Theophilus Green and Damon Coleman were  
24 conveyed to individuals, it was to the St. Louis County  
25 Conveyance Team, correct?

1 A. Yes.

2 Q. And we've heard this term, Lieutenant Delia  
3 was part of an Arrest Team, correct?

4 A. Yes.

5 Q. You agree that in times of civil unrest, it  
6 may be a good idea to have an Arrest Team and a  
7 Conveyance Team, correct?

8 A. Yes.

9 Q. And you agree that if you take certain  
10 Arrest Team officers off of what we could call the  
11 front line for an extended duration, that could  
12 compromise certain safety issues on the front line,  
13 correct?

14 A. Potentially.

15 Q. Okay.

16 A. However, the -- I'll just leave it at that  
17 and let you ask the next question.

18 Q. Okay. And the thought behind the Arrest Team  
19 and the Conveyance Team is so you could have an Arrest  
20 Team convey individuals that had been arrested and then  
21 return to the front line in a more expeditious fashion,  
22 correct?

23 A. No. The purpose of an Arrest Team is to --  
24 let's start off with this.

25 You have a skirmish line and those are the

1 front-line officers usually equipped with shields and  
2 gas masks, helmets, face plates, often times other  
3 weapons.

4 The Arrest Team generally are in a field  
5 force formation or generally behind the skirmish line,  
6 and when they see individuals in the crowd or in front  
7 of the skirmish line that need to be arrested, the  
8 Arrest Team would go forward as a group, take that  
9 person into custody and bring them back behind the  
10 skirmish line for processing.

11 This is where I believe the ball was dropped  
12 by the arresting officers. There should have -- and  
13 their command.

14 There should have been a process established  
15 for booking procedures that would allow those officers  
16 to quickly complete a probable -- what we would refer to  
17 in Florida as a Probable Cause Affidavit that would  
18 define the elements of the crime and that this person  
19 committed it and witnessed by these people, and that  
20 becomes your charging document.

21 When you -- when agencies don't -- when  
22 agencies skip that process, then the probable cause gets  
23 lost.

24 It's happened in other agencies and then you  
25 start getting into issues of violating people's civil

1 rights because we don't know what people were arrested  
2 for. We don't know what the probable cause was.

3 So the way it should happen is there should  
4 be a booking process even if it's an -- it's an  
5 abbreviated booking process, to allow the prisoner to  
6 then be transported to jail and let the officer get back  
7 up onto the line to assist, but even if you don't want  
8 to do it right then and there, there should be some  
9 other process that will take place that day so that  
10 those arrests and the probable cause and the use of  
11 force are captured.

12 You can't drop that as a -- which is a  
13 standard requirement for arrest and use of force and say  
14 that the reason we didn't do it is because we're in a  
15 riot.

16 Even the Department of Justice recognizes  
17 that when they talk about documenting and tracking use  
18 of force.

19 You have to do it, and the fact that you're  
20 in a riot does not excuse you from doing it.

21 And if you can't do it, then perhaps those  
22 arrests are not as important as you -- as you think they  
23 are.

24 Because you need to protect people's civil  
25 rights and provide them due process, and you do that by

1 documenting probable cause.

2 Q. You agree that the City of Ferguson does not  
3 have any requirement that you set forth a Probable Cause  
4 Affidavit, meaning sign and sworn to, correct?

5 A. I will take your word at that; however, at  
6 some point I'm going to assume that at some point sworn  
7 testimony has to be provided regarding probable cause to  
8 a Magistrate or --

9 Q. That is correct, and it can be done orally,  
10 can't it?

11 A. Yes.

12 Q. And that means live testimony coming in in an  
13 ex parte fashion by any officer having the information,  
14 correct?

15 A. Yes.

16 Q. Now, you don't need a signed, sworn affidavit  
17 in order to get a warrant or to have a judge agree there  
18 was probable cause for their arrest, correct?

19 A. No. If you provide oral testimony, perhaps  
20 that would be acceptable in Missouri.

21 Q. And you agree that the State of Missouri does  
22 not have any requirement that there be a signed, sworn  
23 affidavit to support probable cause at the time of the  
24 arrest?

25 A. I will take your word for it, that it doesn't

1 require an affidavit, but it does at some point require  
2 sworn testimony.

3 Q. Agreed. And you agree that the Federal  
4 Constitution does not require that it be in writing; it  
5 just requires that there be sworn testimony at a certain  
6 point, the rebuttal for presumption is within 48 hours  
7 of the warrantless arrest?

8 A. I'll accept that.

9 Q. So then you agree that -- well, you remember  
10 that these officers, the Maryland Heights officers, one  
11 of them conveyed information to the Conveyance Team  
12 regarding the arrests, correct?

13 A. Yes.

14 Q. And you agree that one of the three Maryland  
15 Heights officers certainly had the capability of  
16 appearing before a Magistrate and testifying to  
17 obtain -- on a probable cause hearing having a judge  
18 rule there is probable cause within a certain amount of  
19 time after those arrests?

20 A. I'll accept that.

21 Q. So you agree that failure to provide a  
22 written Probable Cause Affidavit doesn't violate the  
23 Constitution in itself?

24 A. Correct.

25 Q. And you agree that no individual has a right

1 to have a police report prepared within a day or within  
2 two days, correct?

3 A. Correct.

4 Q. Your opinion is with respect to what the  
5 standard in national practices are, right?

6 A. Yes.

7 Q. Your opinion with respect to the report  
8 writing doesn't affect whether someone's civil rights  
9 have been violated, correct, with report writing?

10 A. Well, it would depend on what's in the  
11 report, but if you're talking about the function of  
12 completing a report, yes.

13 Q. How are you doing? Keep going?

14 A. Sure.

15 Q. Okay. What I'm doing is I'm going to try and  
16 not -- I swear, I'm going to try and not ask you the  
17 same things.

18 I'm going to flip through your report and  
19 I'll try to make this quick and painless, sir.

20 MR. LATTIMER: Too late.

21 MR. PLUNKERT: For everyone, right?

22 BY MR. PLUNKERT:

23 Q. The DOJ Report with respect to the City of  
24 Ferguson's policies and procedures, you agree that that  
25 does not have any direct bearing on any of the arrests

1 in this case, correct?

2 A. Correct.

3 Q. Now, I understand that you cited the COPS,  
4 and the COPS Report discusses documentation, and I think  
5 we've discussed documentation fairly thoroughly, haven't  
6 we?

7 A. Yes.

8 Q. And we've covered your opinions on that,  
9 haven't we?

10 A. Yes. I thought so.

11 Q. Yes.

12 And I guess the best way to -- and if you  
13 have it in front of you, feel free to look at your  
14 report.

15 We can take it 1 through, I think, 5 that you  
16 have.

17 It's bullet point 1.

18 MR. LATTIMER: It's right there.

19 BY MR. PLUNKERT:

20 Q. It's Page 10.

21 A. Okay.

22 Q. You agree that in your report you've  
23 enumerated your opinions 1 through 5, correct?

24 A. Yes.

25 Q. Excuse me. Excuse me. 1 through 4.



1 A. 1 through 4.

2 Q. That's my fault. Okay.

3 Those are all the opinions you have in this  
4 case, aren't they?

5 A. Those are the only opinions that I -- that  
6 are in my report, but if I'm asked other opinions, I'll  
7 be -- try to provide them.

8 Q. Now, under opinion Number 1 we just finished  
9 discussing, and that I think thoroughly -- arrests were  
10 made without articulation and documentation of probable  
11 cause.

12 We've discussed that, haven't we?

13 A. Yes.

14 Q. That's not a constitutional opinion, is it?

15 MR. LATTIMER: What does that mean, a  
16 constitutional opinion?

17 BY MR. PLUNKERT:

18 Q. I think we just covered it.

19 The articulation documentation of probable  
20 cause in these affidavits, that doesn't affect someone's  
21 civil rights, correct?

22 A. In affidavits, you're correct.

23 Q. Okay.

24 A. Because you indicated that you can make an  
25 oral testimony.

1 Q. Now, supervisory oversight, let me ask you  
2 this: Who was the supervisory oversight for the three  
3 Maryland Heights police officers during the arrests?

4 A. Whoever the Lieutenant would have been  
5 reporting -- reporting to during this engagement.

6 Q. You agree that was to St. Louis County,  
7 correct?

8 A. I don't know who he directly reported it.  
9 Whether there was another Maryland Heights officer or  
10 Captain who he may have reported to, I -- I just don't  
11 know.

12 Q. So with respect to opinion Number 2, you  
13 don't have any opinion to a reasonable degree of  
14 certainty whether an individual's civil rights were  
15 affected with respect to the arrests of Theophilus Green  
16 and Damon Coleman, correct?

17 A. Based on Number 2?

18 Q. Yes, sir.

19 A. No.

20 Q. That is correct?

21 A. Yes.

22 Q. I'm turning to use of force.

23 We have, I think, gone through these before,  
24 Damon Coleman and Theophilus Green, and your dispute is  
25 with the documentation of any force used, correct?

1           A.     My dispute is that the two Plaintiffs in this  
2 case claim that force was used and that eight months  
3 later the police officers through Menzenwerth claim that  
4 no force was used, and that's going to be a question for  
5 the jury as far as credibility, so I would say, though,  
6 that if -- if force was used, that it should have been  
7 documented.

8                     I understand that the Maryland Heights police  
9 officers claim that they didn't use force and, you know,  
10 I understand that, but I also understand that the  
11 Plaintiffs' claim that there was, so there's still a  
12 dispute of facts.

13           Q.     Was there any evidence, and using any of the  
14 evidence that can conclude what Plaintiffs testified to,  
15 that the force which was used was by a Maryland Heights  
16 police officer?

17           A.     No.

18           Q.     Now, there is a citation to CS gas --

19           A.     Hold on one second with that last question.

20                     So for Theophilus Green, he apparently was  
21 just -- there was no hands-on force to him, so there  
22 would be no claim that Maryland Heights specifically  
23 applied any force, but let me go through Damon Coleman,  
24 because I think he said something different.

25           Q.     And let me focus my question while you're

1 going through that, it's not just whether force was  
2 used but if that force was by a Maryland Heights  
3 officer.

4 A. Understood. Okay. Damon Coleman indicated  
5 that he was kicked and he was struck with an asp, baton  
6 or a stick, and he indicated that during the arrest the  
7 arrest was made by the Maryland Heights police  
8 officers.

9 Q. You would agree there were several officers  
10 in that area, including County officers, as well,  
11 correct?

12 A. Yes.

13 Q. Okay. With that in mind, you agree  
14 Mr. Coleman was never able to state whether it was a  
15 Maryland Heights officer that was responsible for any of  
16 that action?

17 A. Correct.

18 Q. And so take your time.

19 So based on your review now, my original  
20 question, which I think I know the answer to, after  
21 you've had a chance to look through that, you have not  
22 seen any evidence in this case that with respect to the  
23 arrests of Theophilus Green and Damon Coleman that any  
24 force which was used was by a Maryland Heights police  
25 officer, correct?

1 MR. LATTIMER: Objection, mischaracterizes  
2 the testimony.

3 He just said he was hit and kicked with a  
4 baton when he was arrested.

5 BY MR. PLUNKERT:

6 Q. You may answer.

7 A. What Damon Coleman says, during the time he  
8 was arrested he was kicked and struck, and he was  
9 arrested by a Maryland Heights police officer.

10 He himself cannot confirm who arrested him or  
11 who caused that -- who -- who used that force against  
12 him, but one can conclude or at least infer that if the  
13 arresting officers were the ones that kicked and hit  
14 him, then it would have been the Maryland Heights  
15 officers because the other ones didn't arrest him.

16 Q. But you can't state if it were even a  
17 Maryland Heights officer to a reasonable degree of  
18 certainty which one it would have been, can you?

19 A. Correct.

20 Q. Okay.

21 A. Because -- because Damon Coleman can't. I  
22 wasn't there.

23 He was the one that was claiming -- he's the  
24 one that was claiming force was used against him, and if  
25 he can't identify who used the force, then I certainly

1 can't.

2 Q. You have no evidence that Justin Cosma used  
3 any less lethal munitions including tear gas, correct?

4 A. Correct.

5 Q. You have no evidence that suggests any of the  
6 three Maryland Heights officers used any less lethal  
7 munitions including tear gas, correct?

8 MR. LATTIMER: Objection. He just testified  
9 that he was hit was an asp and a baton.

10 BY MR. PLUNKERT:

11 Q. Munitions being the key word.

12 A. I don't recall any testimony that they  
13 used -- from the officers that they used munitions or  
14 that Damon Coleman or Theophilus Green could identify  
15 who used any other less lethal weapons.

16 Q. Okay. Then I think that moves us along to  
17 opinion Number 4, and you spoke about decontamination  
18 and medical aid to injured prisoners.

19 Do you have any evidence that -- and I want  
20 to confine this to Theophilus Green and Damon Coleman.

21 Do you have any evidence that there was a  
22 denial of medical care to either of those two  
23 individuals?

24 A. Not that I recall.

25 Q. And when you speak of decontamination, I know

1 you put it here, can you just in layman's terms explain  
2 for us what that is?

3 A. So when police agencies or police officers  
4 are using munitions that contain CS gas or OC spray,  
5 there should be a process set up as far as a response to  
6 a civil disturbance that would allow for decontamination  
7 of those chemicals on those that may have been  
8 contaminated, whether it was people who have been  
9 arrested, police officers themselves or bystanders who  
10 were not engaged in any protests or under arrest.

11 Widely accepted police practices regarding  
12 the use of those chemicals would have a process to  
13 assist with decontamination of those chemicals and  
14 providing medical aid to those injured, if anybody was  
15 injured, and you would do that in a different location  
16 where those folks could be taken to be treated.

17 Q. In the sense of a different location, you  
18 mean in a civil unrest atmosphere, correct?

19 A. Yes.

20 Q. Okay.

21 A. And it's the same thing with the booking  
22 process that I talked about.

23 Obviously you're not going to try to document  
24 and book people in the middle of a civil unrest.

25 You would have a staging area or an area

1 where those processes can be set up and conducted.

2 Q. And did St. Louis County have any  
3 decontamination procedures?

4 A. Not that I'm aware of. I don't remember. I  
5 don't recall.

6 Q. Where would this separate area be?

7 A. It could be wherever it was appropriate as  
8 determined by those in command.

9 So one of the things that you -- we set up  
10 when you have civil disturbances is command posts. You  
11 set up media posts. You set up a decontamination and  
12 medical aid post.

13 You would set up a booking process, so you  
14 would set it up wherever you could as long as it was in  
15 a safe, secure environment where people can be brought  
16 there and processed.

17 Q. And that's something that pertains to the  
18 command structure, correct, that it be in place?

19 A. Yes.

20 Q. And specifically you don't expect front  
21 line -- we'll call it the skirmish line individuals to  
22 perform decontamination procedures right then and there,  
23 correct?

24 A. Correct.

25 Q. You don't expect Arrest Team individuals to



1 perform it when they arrest them, do you?

2 A. I agree.

3 Q. Okay.

4 A. You do not.

5 Q. Paramedics, do you expect them to be  
6 involved?

7 A. Absolutely.

8 Q. Do you believe that the Maryland Heights  
9 officers should have decontaminated Theophilus Green or  
10 Damon Coleman at any point?

11 A. If they could as they were taking them back,  
12 yes.

13 If they can assist them in some fashion, yes,  
14 but I also recognize that police officers are not  
15 paramedics and if there are paramedics set up and that  
16 you can bring these folks to, that's where you should  
17 bring them so they're equipped and trained and have the  
18 ability to decontaminate and treat these people.

19 Q. Let me ask you are you critical of the three  
20 Maryland Heights officers in regard to decontamination  
21 and their behavior in the arrests?

22 A. In regards to decontamination?

23 Q. Yes, sir.

24 A. No.

25 Q. Or medical aid to injured prisoners, same

1 question, are you critical of them?

2 A. No.

3 Q. Okay.

4 A. But if there was a -- if -- if -- if there  
5 was CS gas and -- and OC spray, they should have taken  
6 them to receive some treatment.

7 I'm not saying they themselves should have  
8 offered the treatment.

9 Q. And at least at this point you're not  
10 critical of their behavior?

11 A. Correct.

12 Q. You mentioned 1972.

13 The benefit of 1972 -- I mentioned 1972. You  
14 said in the '70s there was a riot on the beach in  
15 Fort Lauderdale and that that was subject to police  
16 response, correct?

17 A. In the '70s.

18 Q. Yes.

19 A. Yes.

20 Q. Have you ever heard of something called the  
21 Monster?

22 A. Yes.

23 Q. Describe what the Monster is.

24 A. It's an armor-plated vehicle that is -- you  
25 may describe it as a -- the size of a Winnebago and it

1 has solid rubber tires. It has bullet-proof glass. It  
2 has tear gas ports. It has a loud PA system.

3 It also has chains that drop down from the  
4 body of the vehicle to the ground to try to prevent  
5 anything from being thrown or pushed underneath the  
6 vehicle.

7 It's a -- it's referred to casually as the  
8 Monster, but it's a response vehicle.

9 Q. An armored police vehicle?

10 A. Yes.

11 Q. Is it still in function today?

12 A. It is.

13 MR. HUGHES: Is that in Fort Lauderdale?

14 THE WITNESS: Yes.

15 BY MR. PLUNKERT:

16 Q. Have you ever driven it?

17 A. No. You have to have special training to  
18 drive it.

19 Q. Do you disagree with it being used in a  
20 situation where there is civil unrest?

21 A. No.

22 Q. You don't disagree with the vehicles that  
23 were in use in the Ferguson response, do you?

24 A. I don't disagree that the vehicles -- with  
25 the vehicles being in use.

1                   How the vehicles were used as reported by DOJ  
2           I do have a concern about.

3           Q.       Were rubber bullets used?

4           A.       Nobody from -- nobody from the law  
5           enforcement side confirmed that -- that rubber bullets  
6           were used, and Chief Belmar indicated that they were not  
7           used, so there's no evidence that rubber bullets were  
8           used.

9           Q.       Let me ask you some questions about what kind  
10          of an expert that you're not, and this is pretty much  
11          for the record.

12                   You're not a human factors expert, correct?

13          A.       Correct.

14          Q.       You're not a psychologist, correct?

15          A.       Correct.

16          Q.       You're not a medical physician, are you?

17          A.       I am not.

18          Q.       You're not a psychiatrist, are you?

19          A.       No.

20          Q.       So you're not an expert on injuries, are  
21          you?

22          A.       No.

23          Q.       Have you been sued?

24          A.       Yes.

25          Q.       You were sued in the late '70s or the early

1 '80s regarding the arrest of an individual with respect  
2 to charges of fraud, right?

3 A. Yes.

4 Q. What is it that the individual complained of  
5 or said that happened?

6 A. I was a detective and there was another  
7 detective that was investigating this person and  
8 persons for fraud, and we tracked them to a hotel on the  
9 beach.

10 We knew that there was a luxury vehicle that  
11 was on the hotel property that they had -- that this  
12 person had arrived in and we wanted to make contact with  
13 him and we eventually did and we arrested him, seized  
14 the vehicle and we also seized 17,000 -- if my memory's  
15 correct, \$17,000 in cash.

16 This person was tried and convicted,  
17 sentenced to prison.

18 While he was in prison he sued myself and the  
19 other detective pro se for unlawful seizure I would  
20 imagine.

21 I really don't remember, but the case was  
22 eventually disposed of.

23 Q. Something handwritten I'm sure?

24 A. I think it was.

25 Q. You agree that from time to time someone may

1 raise an allegation against a police officer for  
2 something, and just because they allege it, it doesn't  
3 mean it actually happened, correct?

4 A. Correct.

5 Q. And in that case you agree what they alleged  
6 isn't what happened?

7 A. Correct.

8 Q. Did it have to do with force used, as well,  
9 not just the seizure?

10 A. I don't recall an allegation of force.

11 Q. What was the disposition?

12 A. To my knowledge it was either dismissed --  
13 I'm going to assume it was dismissed.

14 Q. You don't have any information, knowledge  
15 that it was settled or anything --

16 A. No.

17 Q. -- like that?

18 A. No.

19 Q. Now, the second one -- there are two times  
20 total that you've been sued, correct?

21 A. Yes.

22 Q. The second time was in 2001 about some  
23 nightclub?

24 A. Yes.

25 Q. All right. What is it that they said you

1 did?

2 A. In 2001 I was the Assistant Chief and we had  
3 a nightclub on the beach that was violating the City  
4 ordinance regarding the admission of underaged people.

5 Their contention was that they were a  
6 restaurant, and if you're a restaurant in the City of  
7 Fort Lauderdale, underage people can be admitted, but if  
8 you're a nightclub, you must be 21 or older.

9 They were putting out free buffet food and  
10 claiming that they were a restaurant.

11 We investigated and determined that they were  
12 not, in fact, a restaurant.

13 We went through a whole process of education,  
14 encouragement, enforcement, and then we started  
15 arresting the managers who were on duty at the time we  
16 found underage people inside this nightclub.

17 Eventually a lawsuit was filed against myself  
18 and the Chief of Police in Federal Court, and that was  
19 eventually dismissed, as well.

20 Q. Was it for unlawful arrests?

21 A. I believe so.

22 Q. And nothing to do with force?

23 A. Yeah, nothing to do with force.

24 Q. So they complained that you arrested them  
25 without probable cause, correct?

1           A.     No. They complained that the police  
2     department arrested them, that individual police  
3     officers arrested them at my direction because I was an  
4     Assistant Chief. I didn't arrest anybody.

5                 The Chief did not arrest anybody, but as the  
6     command of the agency, we were targeted as those  
7     responsible for the arrests.

8           Q.     I see. And did you direct your officers to  
9     make that arrest?

10          A.     Yes.

11          Q.     And the Chief did, as well?

12          A.     Yes. We had meetings regarding what approach  
13     we were going to take with this nightclub and their  
14     activities, and it was determined that we would enforce  
15     the City ordinance and we did.

16          Q.     Now, in comparison, you don't have any  
17     evidence that Tom Jackson ever directed the arrest of  
18     any of the Plaintiffs, correct?

19          A.     No, I don't have any evidence.

20          Q.     What was the disposition of this --

21          A.     Dismissed again.

22          Q.     Okay. What else is in your file that you  
23     brought?

24          A.     Well, I brought a lot of stuff because I was  
25     asked to bring --



1 Q. Yeah?

2 A. -- a lot of stuff.

3 So this is a file on --

4 Q. Go ahead. I'll listen to you.

5 A. -- Dwayne Matthews/Nathan Burns.

6 Q. Would you mind marking that binder, sir?

7 A. No.

8 (Thereupon, Defendant's Exhibit F was marked  
9 for identification.)

10 THE WITNESS: Let me try to get organized  
11 here before we --

12 MR. HUGHES: F is what?

13 THE WITNESS: Dwayne Matthews and Nathan  
14 Burns.

15 (Thereupon, Defendant's Exhibit G was marked  
16 for identification.)

17 BY MR. PLUNKERT:

18 Q. And Exhibit G that was just marked by  
19 Jennifer is in front of you right here.

20 That's the document that you mentioned you  
21 read and were trying to bring documents to satisfy that,  
22 correct?

23 A. Yes.

24 Q. To your knowledge, did you comply with the  
25 full requests that are in that?

1 A. I did.

2 Q. So we have three binders that I marked so  
3 far, and is there anything else that you brought?

4 A. Yeah, there's a lot.

5 Q. Oh, gosh.

6 A. This is a binder on -- 'cause one of the  
7 items that was requested, any materials that you -- that  
8 you reviewed, so I reviewed a lot of materials, and as I  
9 said earlier in my deposition, I review materials all  
10 the time as part of my function with the Sheriff's  
11 Department.

12 Q. Okay.

13 A. So I reviewed the President's Task Force on  
14 21st century policing.

15 I reviewed settlement agreements between the  
16 DOJ and Albuquerque, Cleveland and Newark. They're  
17 here.

18 MR. HUGHES: If I may interrupt, it said any  
19 materials that you relied upon to form your  
20 opinions. Are you saying --

21 THE WITNESS: There's information in here  
22 about documentation on use of force and arrests.

23 So when you say "rely upon", I use materials  
24 like this to assist me in not -- to assist you in  
25 that it's just not my opinion that the reports

1           should be or arrests should be documented or force  
2           should be documented.

3           This is supportive documentation for those  
4           opinions.

5 BY MR. PLUNKERT:

6           Q.     So you rely upon that binder in front of you  
7           that we're going to mark in making that opinion?

8           A.     No.

9           Q.     Oh.

10          A.     I rely on my training, my knowledge, my -- my  
11          skills and my education to know what the practices are  
12          regarding force and reporting.

13          It's supportive -- those opinions are  
14          supported by documents like this from DOJ that -- that  
15          agrees with what I'm saying.

16          Q.     And you've just referenced "like this".

17          Let's go ahead and mark what you just touched  
18          when you said "like this" that we've been discussing as  
19          Exhibit H.

20          (Thereupon, Defendant's Exhibit H was marked  
21          for identification.)

22          THE WITNESS: This is the investigation of  
23          the Ferguson Police Department. Would you like  
24          that?

25                   - - -

1 BY MR. PLUNKERT:

2 Q. I have a copy but we can mark yours. Did you  
3 make any notes in it?

4 A. I don't know.

5 Q. You have some tabs. We'll mark it.

6 A. Okay.

7 (Thereupon, Defendant's Exhibit I was marked  
8 for identification.)

9 BY MR. PLUNKERT:

10 Q. It's my understanding you did not rely upon  
11 the DOJ Report dated March 4th of 2015, which is now  
12 marked as Exhibit I, in rendering your opinions; you  
13 believe they're supportive of a few of them?

14 A. Yes.

15 Q. Okay.

16 A. This is the After-Action Assessment of the  
17 police response to the demonstrations by DOJ.

18 MR. PLUNKERT: We can mark it as J.

19 (Thereupon, Defendant's Exhibit J was marked  
20 for identification.)

21 THE WITNESS: This is a binder of --

22 BY MR. PLUNKERT:

23 Q. I was going to ask you a question about this.

24 A. Okay.

25 Q. Actually on the Ferguson, what does Exhibit I

1 support? Which opinion of yours does Exhibit I  
2 support?

3 A. The fact that arrests must be -- let me look  
4 at it.

5 Q. Sure.

6 A. Well, it supports my position that you must  
7 arrest people with probable cause and you must use  
8 reasonable force.

9 Q. Anything else?

10 A. I'm looking through it.

11 It supports my opinion that arrests must be  
12 supported by probable cause.

13 Q. And those that you have said so far, you  
14 agree those are general constitutional principles,  
15 correct?

16 A. Yes.

17 Q. All right. Anything else in there?

18 A. They talk about detaining an officer --  
19 detaining an individual without articulable reasonable  
20 suspicion of criminal activity or arrest of a person  
21 without probable cause.

22 They're being critical of those types of  
23 arrests.

24 It supports my opinion that if you make an  
25 arrest, you have to have probable cause.

1 Q. Again, another general constitutional  
2 principle, correct?

3 A. Yes, and I think that's what we're going to  
4 see here in -- in general. The same thing with  
5 excessive force.

6 Q. Would it be safe to say that the support that  
7 you find in Exhibit I is for general constitutional  
8 principles?

9 A. Yes.

10 Q. You would agree that there's no specific  
11 reference to any events in there that have an impact on  
12 your opinion, like a specific event?

13 A. Yes.

14 Q. And also, you agree that any of the arrests  
15 in this case, those are not contained in Exhibit I or  
16 referenced in Exhibit I, are they?

17 A. They are not, you're correct.

18 Q. So kind of full circle, you could learn the  
19 general principles that are stated in Exhibit I in other  
20 documents such as case law which state the general  
21 principles in constitutional law, correct?

22 A. Yes.

23 Q. And anything beyond that that you can point  
24 to?

25 A. Let me just -- there was -- let me just keep

1 looking.

2 Yes, it talks about the Ferguson Police  
3 Department's use of force review system being  
4 ineffectual, essentially non-existent, which is  
5 supporting my opinion about -- that any time an officer  
6 uses force, a supervisor must respond to investigate,  
7 must complete a Use of Force Report and so forth.

8 And it also mentions on Page 38 that perhaps  
9 the greatest deviation from Ferguson Police Department's  
10 use of force policies is that officers frequently do not  
11 report the force they use at all.

12 Q. The Ferguson officers?

13 A. Yes.

14 Q. What bearing does that have -- and to be  
15 certain, there are no Ferguson officers making any  
16 arrests of the Plaintiffs in this case, right?

17 A. Correct.

18 Q. Okay.

19 A. But what it does is support my position that  
20 if you're going to use force, you have to report it.

21 Q. The general principle?

22 A. Yes.

23 Q. I see.

24 You agree that what you report doesn't affect  
25 whether there is probable cause to make the arrest,

1 correct?

2 A. What you report on force?

3 Q. Yes.

4 A. Yes.

5 Q. And you would agree that what you report on  
6 the use of force doesn't impact whether excessive force  
7 was used, correct?

8 A. No. What you report doesn't change what  
9 happened. Is that what you're trying to say?

10 Q. Yes. And even whether you report it doesn't  
11 change what happened, correct?

12 A. Correct.

13 Q. And I think you finished flipping through  
14 that.

15 Is there anything beyond what we've discussed  
16 in Exhibit I that supports what you've said today that  
17 you believe?

18 A. I didn't go through every page. I think that  
19 there may have been language here about documentation of  
20 arrests, as well.

21 Q. Okay.

22 A. So -- which goes back to my opinion that  
23 arrests should be documented in police reports.

24 Q. Anything other than that in Exhibit I?

25 I want to make sure why you're using "I".



1 Anything other than what you've told me so far?

2 A. Not that I am aware of so far.

3 Q. Other documents you have?

4 A. Yep. Let me get to these.

5 This is a deposition of Justin Cosma.

6 Q. Okay.

7 A. Deposition of Richard Mundy.

8 This is the Judge's order from the District  
9 Court.

10 Q. Was it Abdullah, right?

11 A. Yes. You had asked for my current Rule 26, I  
12 believe, so that's there.

13 Q. Okay.

14 A. This is the actual -- you had asked for my  
15 fee agreement, which is here.

16 Q. Okay. I think we marked that one too.

17 A. I think you have one that's marked. You had  
18 also asked for documentation about past -- past fees  
19 that I've charged.

20 So I went back as far as 2011, and I found a  
21 deposition from 2011 where I charged \$2,500.

22 Q. Okay.

23 A. You also asked for documentation about my  
24 fees from four years ago I think is what it may have  
25 said.

1 Q. Sure, and I think we got that in the fee  
2 agreement that you provided us, the stuff that we've  
3 marked.

4 A. Well, this is a -- this is an E-mail from  
5 2011, which -- so as far back as 2011 I was charging  
6 \$300 an hour and a 10-hour retainer, so here's an E-mail  
7 that supports that.

8 Q. Okay.

9 A. You had asked for a list of my advertising,  
10 so I advertise with JurisPro, so here is my -- Juris,  
11 J-U-R-I-S, Pro Expert Witness Directory, so I have a  
12 print-out of everything there.

13 Q. Okay.

14 A. I also have a print-out of my advertising  
15 from HG.org, which is another expert witness directory.

16 MR. HUGHES: Could we mark those as  
17 exhibits?

18 MR. PLUNKERT: I'm going to try to mark them  
19 all.

20 If there's a good way, Bob, that we can mark  
21 all of these as a group or whatever you would like  
22 to do to make it orderly.

23 MR. HUGHES: You can mark some as a group,  
24 but how about the advertising as K and L.

25 - - -

1 (Thereupon, Defendant's Exhibits K and L were  
2 marked for identification.)

3 THE WITNESS: In the advertising you had also  
4 asked for copies of different CVs that I may have  
5 had over the years, so just for explanation, what I  
6 do with my CV, I keep it current, so I've changed  
7 it over the -- I've eliminated things that were  
8 dated that I didn't think were important anymore to  
9 my current work, and I've added things that -- such  
10 as my current position.

11 I did find a CV from 2011, which doesn't  
12 include my current work, and may have included some  
13 of my professional activities that I have since  
14 eliminated from my CV because it's really not  
15 applicable anymore 'cause it's -- it's dated and so  
16 forth, so there's an extra CV in here.

17 BY MR. PLUNKERT:

18 Q. Okay.

19 A. So if you wanted to mark those separately.

20 MR. HUGHES: "K" is JurisPro. "L" is  
21 HG.org.

22 Is this your old CV?

23 THE WITNESS: No. The old CV is under the  
24 JurisPro.

25 - - -

1 BY MR. PLUNKERT:

2 Q. Exhibit K is the JurisPro document that you  
3 just described?

4 A. Yes.

5 Q. And Exhibit L is --

6 A. HG Experts.

7 MR. HUGHES: And just to make it clear,  
8 attached to Exhibit K is an old CV?

9 THE WITNESS: Correct.

10 BY MR. PLUNKERT:

11 Q. Do you want to shove all those in that one  
12 and mark it as --

13 A. Well, these are notes, but I have other notes  
14 that I can probably put in that grouping.

15 Q. Okay. And, sir, can you mark "M" as your  
16 notes?

17 A. Yes.

18 Q. And it's in a manila folder, correct?

19 A. Yes.

20 (Thereupon, Defendant's Exhibit M was marked  
21 for identification.)

22 THE WITNESS: Okay. This is my notes from  
23 the deposition of Menzenwerth. I'll just put that  
24 in my notes.

25 - - -

1 BY MR. PLUNKERT:

2 Q. Yes, that's great.

3 A. Nathan Burns, this will go in the Nathan  
4 Burns file.

5 Q. You can slide that in the binder. That  
6 sounds great.

7 A. This is the Mundy depo. I don't know where  
8 you want this. And the Justin Cosma depo if you want  
9 that.

10 Q. I guess unless you have a spare manila  
11 folder, we'll just individually mark them.

12 A. I don't.

13 (Thereupon, Defendant's Exhibits N, O and P  
14 were marked for identification.)

15 BY MR. PLUNKERT:

16 Q. Sir, Exhibit N is the Abdullah order; is that  
17 correct?

18 A. Yes.

19 Q. Exhibit O is your highlighted copy, I  
20 believe, two-sided of Richard Mundy?

21 A. Yes.

22 Q. Exhibit P is your highlighted copy of Justin  
23 Cosma?

24 A. Okay.

25 Q. What don't we have marked?

1           A.     This is the depo of Antawn Harris, as well as  
2     the police report regarding him, and I thought I had a  
3     clip.

4           Q.     Keep it together. We'll mark it.

5                     (Thereupon, Defendant's Exhibit Q was marked  
6     for identification.)

7     BY MR. PLUNKERT:

8           Q.     Sir, Exhibit Q is deposition of whom again?

9           A.     Antawn Harris, as well as the arrest report.

10          Q.     Thank you.

11                  MR. HUGHES: You mean the police report of  
12     Antawn Harris?

13                  THE WITNESS: Yes. Here's all the  
14     correspondences with myself and Mr. Lattimer and  
15     his firm.

16                  MR. PLUNKERT: We'll mark that one.

17                     (Thereupon, Defendant's Exhibit R was marked  
18     for identification.)

19     BY MR. PLUNKERT:

20           Q.     Exhibit R is your correspondence with  
21     Mr. Lattimer in this lawsuit, correct?

22           A.     Yes.

23           Q.     And then you have I believe what you want to  
24     mark as a group, which is a big brown folder, right?

25           A.     Yes.

1 Q. And what is that?

2 A. So I have a billing folder.

3 Q. Okay.

4 A. I have the report, the Ferguson report. I  
5 have -- I included this in case it came up, but it  
6 didn't come up, so it's copies of certifications of  
7 recent training that I've had.

8 I don't know if you're interested on that or  
9 not.

10 Q. I trust it. I'm sure it's true.

11 A. I mean, do you want me to include this?

12 Q. Feel free to include it in the folder, sure.  
13 I just don't need to ask you about any of  
14 it.

15 A. I'm going to stick it in the back of billing  
16 for now.

17 Q. Sure.

18 A. Here's a draft, expert report.

19 MR. HUGHES: We'll actually mark that  
20 separately.

21 THE WITNESS: Should I put it in the folder?

22 (Thereupon, Defendant's Exhibit S was marked  
23 for identification.)

24 BY MR. PLUNKERT:

25 Q. What we marked as Exhibit S is a draft of

1 your report, correct?

2 A. Yes.

3 Q. And you've placed that inside a brown binder,  
4 which we should probably now mark as Exhibit T; is that  
5 correct?

6 A. Yes.

7 (Thereupon, Defendant's Exhibit T was marked  
8 for identification.)

9 THE WITNESS: The next folder is use of force  
10 articles and policies that I review periodically  
11 when I'm dealing with a use of force case.

12 BY MR. PLUNKERT:

13 Q. That's also in Exhibit T, correct?

14 A. Yes.

15 Q. Okay.

16 A. I also have use of force policies from the  
17 IACP and position papers.

18 I have another folder just called Resource  
19 Material, which is, again -- has some articles about  
20 DOJ, review of Ferguson about crowd management and  
21 protecting civil rights.

22 It also contains some CALEA, the Commission  
23 on Accreditation of Law Enforcement Agencies, standards.

24 Q. And all those documents plus the IACP  
25 document is contained in Exhibit T, correct?



1 A. Yes.

2 Q. Okay.

3 A. I think that's the loose stuff for now.

4 I have another binder with all the  
5 interrogatories --

6 Q. Okay.

7 A. -- and answers.

8 MR. HUGHES: We don't need that.

9 BY MR. PLUNKERT:

10 Q. Unless you made notes on it, we don't need  
11 it.

12 A. I don't think I made any notes.

13 Q. That probably didn't have much influence on  
14 your opinions, did it?

15 A. (The Witness shook head in the negative.)

16 Q. That's a no, right?

17 A. No. Sorry.

18 These are just more notes on individuals that  
19 I'll put in the binders.

20 Q. Okay. Just state which binder it's going in.

21 A. So this is going into the Tracey White  
22 folder.

23 Q. Oh, they're all named? You can just put them  
24 in. That's okay.

25 MR. HUGHES: It's your handwritten notes?

1 THE WITNESS: Yes.

2 BY MR. PLUNKERT:

3 Q. That's okay. We don't have to do it on the  
4 record. I'll trust you to put it in.

5 A. This is Dwayne Matthews.

6 MR. HUGHES: They're being placed where?

7 THE WITNESS: In the front pocket of the  
8 binders of the appropriate --

9 BY MR. PLUNKERT:

10 Q. That's great.

11 Any other documents that we haven't marked?

12 A. I'm looking. You wanted everything.

13 This box, and I think there's a cover,  
14 contains the files of Kerry White and the two Bowers and  
15 my notes.

16 Q. Okay.

17 A. When these were printed, they were not  
18 printed with a three -- three holes punched, so I  
19 couldn't put them in a binder and just stuck them in  
20 here.

21 MR. HUGHES: Can I see that?

22 THE WITNESS: (The Witness complied.)

23 BY MR. PLUNKERT:

24 Q. It's his folks, so it's up to him.

25 A. I'm sorry?

1 Q. It's his folks, so it's up to him if he wants  
2 to mark them.

3 A. Oh, okay. I think that's basically it.

4 Oh, wait a minute.

5 This is a FEMA Field Force Command and  
6 Planning Manual, which talks about the things that I  
7 talked about regarding arrest teams, booking processes,  
8 things of that nature.

9 MR. PLUNKERT: What is the next exhibit, U I  
10 think?

11 (Thereupon, Defendant's Exhibit U was marked  
12 for identification.)

13 BY MR. PLUNKERT:

14 Q. Sir, we've marked that as Exhibit U,  
15 correct?

16 A. Yes.

17 Q. Anything else?

18 A. No.

19 Q. All right. Thank you for bringing those and  
20 thank you for patiently marking those as we went through  
21 them.

22 We will figure out what to copy, what to scan  
23 at another point in time, but they'll just be part of  
24 the record as exhibits.

25 I have just a few more questions on things

1       that I was thinking of.

2                   Have you ever been boots on the ground during  
3       a riot?

4           A.     Yes.

5           Q.     Okay.

6                   MR. HUGHES:   Other than the New Year's Eve  
7       riot?

8                   THE WITNESS:   Well, that's what I'm referring  
9       to.

10                   MR. LATTIMER:   One at a time.   One at a time.

11       BY MR. PLUNKERT:

12           Q.     Other than that New Year's Eve riot?

13           A.     It was an annual event, so I have a specific  
14       recollection of -- of one because I was -- I received a  
15       dose of CS gas, so that's -- is strong in my memory, but  
16       I'm sure I was out there for other events on New Year's  
17       Eve.

18                   I just don't have specific details about that  
19       information.

20           Q.     Did you deploy any less lethal munitions?

21           A.     No.

22           Q.     Were you on a skirmish line?

23           A.     Yes, I was.

24           Q.     Did you make any arrests?

25           A.     No.

1 Q. Were you assaulted?

2 A. No.

3 Q. Was there any verbal abuse that you  
4 received?

5 A. Yes.

6 Q. Such as what?

7 A. Again, this was 40 years ago or so.

8 Q. Okay.

9 A. I don't recall exactly what they said, but I  
10 can tell you it wasn't complimentary.

11 Q. Sure. And you have not been a sworn police  
12 officer for approximately ten years; is that right?

13 A. Correct.

14 Q. Do you have the authority to make an arrest?

15 A. Today?

16 Q. Yes.

17 A. No, I do not.

18 Q. I assume that there is continuing education  
19 in Florida in order to maintain a license to be an  
20 officer?

21 A. Yes.

22 Q. And that licensure, what do you call it?

23 A. Certification.

24 Q. And is that certification up to date?

25 A. No.

1 Q. Okay.

2 A. And the continuing education is not -- the  
3 last time I had continuing education was in 2008.

4 I took a 40-hour course, which is required  
5 every four years, so from 2008 through 2012 I would have  
6 met the continuing education requirements.

7 What happened, though, was because my --  
8 because of my retirement from Fort Lauderdale Police and  
9 my not being employed by a law enforcement agency, it  
10 exceeded eight years.

11 In order for me to be certified, I don't have  
12 to go back to the full Academy to be certified again,  
13 and I made a determination I wasn't going to do that  
14 because of practical reasons, because in order to  
15 qualify for a State pension, which is different from the  
16 Fort Lauderdale pension, I would have to serve eight  
17 years with the Sheriff's Office to vest.

18 I knew I was not going to be with the  
19 Sheriff's Office for eight years, so I made a decision  
20 I'm not going to go back to the Academy. I'll serve in  
21 a civilian capacity, which I do today.

22 Q. You agree with respect to the Federal  
23 Constitution an arrest must be supported by a probable  
24 cause for any crime, correct?

25 A. Yes.

1 Q. Not necessarily the crime that was envisioned  
2 at the time of the arrest, correct?

3 A. Yes.

4 Q. And you agree that the prosecutor is really  
5 the one that brings the charges formally?

6 A. Yes.

7 Q. And the police officers technically recommend  
8 what the charge is, right?

9 MR. LATTIMER: Objection, relevance and  
10 materiality, misstates the facts.

11 THE WITNESS: Police officers make arrests  
12 based on what they believe is probable cause to  
13 charge somebody with a particular crime.

14 If at the time they presented a case to the  
15 prosecutor a determination is made that another  
16 charge is more suitable, then that could be made,  
17 but the -- the arresting officers arrest somebody  
18 based on what they believe at the time is -- is  
19 probable cause for a particular crime.

20 BY MR. PLUNKERT:

21 Q. And in your experience as an officer,  
22 everyone that you arrest isn't necessarily prosecuted,  
23 correct?

24 A. Correct.

25 Q. I mean, there's sometimes a little bit of a

1 rubbing of the wrong way between law enforcement and the  
2 prosecutors because sometimes prosecutors will just  
3 choose with prosecutorial discretion not to prosecute  
4 someone that the officers had seen commit a crime,  
5 correct?

6 A. Correct.

7 Q. And sometimes those charges, as you  
8 mentioned, may change if the prosecutor sees elements to  
9 another crime in the review of the file, correct?

10 A. Yes, absolutely.

11 Q. And sometimes that's an outstanding warrant,  
12 correct?

13 A. Yes.

14 Q. And are you aware that Theophilus Green had  
15 outstanding warrants at the time of his arrest?

16 A. Yes.

17 Q. And you agree that supports probable cause to  
18 arrest someone on that warrant alone, correct?

19 A. Yes.

20 Q. In other words, it's not a warrantless arrest  
21 at that point; it is an arrest on a warrant, right?

22 A. Yes.

23 Q. And a magistrate has already determined  
24 probable cause, right?

25 A. Yes.



1 MR. PLUNKERT: Well, I appreciate your time  
2 today and your patience. That's all the questions  
3 I have for you.

4 THE WITNESS: Okay. Thank you.

5 REDIRECT EXAMINATION

6 BY MR. HUGHES:

7 Q. I have a few more.

8 You just mentioned you reviewed use of force  
9 policies from IACP, correct?

10 A. Yes.

11 Q. You're not going to be testifying that  
12 St. Louis County's use of force policy is deficient in  
13 any way, are you?

14 A. No.

15 MR. LATTIMER: I thought it was IAACP.

16 THE WITNESS: No. It's International  
17 Association of Chiefs of Police, IACP.

18 BY MR. HUGHES:

19 Q. We touched upon this earlier today, but when  
20 you're talking about decontamination and medical aid to  
21 prisoners, you're talking about when chemical munitions  
22 are used there should be a process set up to allow for  
23 decontamination from these chemicals.

24 Are you saying for CS tear gas and even Mace  
25 there should be something other than fresh air and

1 time?

2 A. Yes.

3 Q. And you said it's widely accepted practices.

4 Any of the exhibits here, all your stuff  
5 here, does anything here say, anything that you brought  
6 say that there's a widely accepted practice that there  
7 must be decontamination set up for tear gas?

8 A. Yes. In the Field Force Command and Planning  
9 Manual produced by FEMA.

10 MR. LATTIMER: What's the exhibit number?

11 THE WITNESS: This is Exhibit Number U.

12 On Page TT-22 it talks about decontamination,  
13 and it says that decontamination procedures and  
14 on-site facilities must be coordinated with the  
15 fire department, emergency medical services and  
16 hospitals.

17 Arrested people who are contaminated must be  
18 decontaminated and treated. Procedures need to be  
19 developed to handle both cooperative and  
20 uncooperative arrestees.

21 BY MR. HUGHES:

22 Q. Does it say what decontaminated procedures  
23 would be?

24 A. I don't know whether it does or not. It gets  
25 into detail further on.

1           There are other manuals that are produced by  
2       FEMA regarding field force, and perhaps those manuals  
3       are more specific about setting up decontamination  
4       procedures.

5           Q.     I mean, you mentioned one time on New Year's  
6       Eve tear gas, you were subject to tear gas.

7                     How were you decontaminated in that case?

8           A.     I really couldn't tell you what happened back  
9       then.

10          Q.     It was just fresh air; isn't that correct?

11          A.     No. I think my response was I don't  
12       recall --

13          Q.     Okay.

14          A.     -- whether I was treated or what happened  
15       because it was so long ago.

16          Q.     Okay.

17          A.     But I'll also -- on -- in Section RCA-29  
18       there's another section on decontamination of riot  
19       control agents, and again, it talks about the  
20       requirement to have decontamination procedures not only  
21       for -- for law enforcement first responders, other  
22       police officers, arrested persons and community  
23       members.

24          Q.     And again, what are the decontamination  
25       procedures?

1           A.     They should have decontamination kits  
2     consistent of a decontamination site, water sources,  
3     exhaust fans, paper towels, spray bottles containing  
4     water, a change of clothing, plastic bags, tools to  
5     mark --

6           Q.     Is it for --

7                   MR. LATTIMER: Let him finish. Let him  
8     finish. Let him finish.

9                   THE WITNESS: And there's also  
10    decontamination considerations for the arrested and  
11    the detained.

12   BY MR. HUGHES:

13          Q.     Is this for tear gas?

14          A.     This is for riot control agents.

15          Q.     Which is what?

16          A.     Which includes --

17          Q.     Do we know what that is?

18          A.     Yes. It includes chemical agents, such as  
19    tear gas and OC spray.

20                   Those are the agents that were deployed  
21    during this response to the disturbances.

22                   And what I'm suggesting to you is that if  
23    you -- if you're going to deploy chemical agents in this  
24    setting where people who are arrested, people who are  
25    actually other police officers or community members, you

1 should have a process to assist them with  
2 decontamination of those agents.

3 Q. Do you --

4 A. And FEMA in their Field Force Command and  
5 Planning Manual specifies that you need to do that.

6 Q. Can you cite me or tell me what the  
7 decontamination procedures are of the Broward County  
8 Sheriff's Department, your employer?

9 A. We turn that responsibility over to the  
10 Department of Fire Rescue, and they would be the ones  
11 who have that expertise as to what they would do to  
12 establish those procedures.

13 We do have training, joint department  
14 training with Fire Rescue and the Department of Law  
15 Enforcement regarding responses to civil disturbances,  
16 and the decontamination process is part of that response  
17 plan.

18 And another part of the response plan is the  
19 booking procedure that I mentioned before because that's  
20 the widely accepted practice for police response to  
21 civil disturbances.

22 Q. Regarding your bullet point number 2,  
23 supervisory oversight --

24 MR. LATTIMER: He's talking about your  
25 report.

1 BY MR. HUGHES:

2 Q. Of your report.

3 A. Yeah.

4 Q. You don't have any opinion whether the civil  
5 rights of any particular Plaintiff in this case were  
6 affected with regard to supervisory oversight?

7 A. No. I think that's a determination that's  
8 made by the jury, and my opinion would be that to assist  
9 the jury is to explain to them that when you make an  
10 arrest, that there has to be supervisory oversight of  
11 those arrests and those reports, as well as supervisory  
12 oversight of the use of force to ensure that the force  
13 was within policy and was with -- and was objectively  
14 reasonable.

15 Q. Do you have any idea of how many supervisors  
16 were present that were nearby with all of the particular  
17 Plaintiffs in this case?

18 A. No, and I'll also make mention that there  
19 were supervisors that were responsible for some of the  
20 force and were involved in some of the arrests, so I  
21 would not expect a supervisor to investigate his own use  
22 of force.

23 Q. What supervisor was involved in use of force  
24 of any of the Plaintiffs?

25 A. Well, if you look at -- Sergeant David Ryan

1 took Kerry White to the ground, if I remember  
2 correctly.

3 Q. Tracey White?

4 A. Kerry White.

5 Q. Kerry White. You said Sergeant David Ryan?

6 A. I believe so, but let me further qualify  
7 that.

8 If a supervisor in any of these arrests used  
9 force or -- used force, then he should not review his  
10 own use of force.

11 Somebody else -- his supervisor or somebody  
12 of a higher rank should review his use of force.

13 Q. Do you have an estimate as to how much time  
14 the particular officers that are being sued by Dwayne  
15 Matthews spent with Dwayne Matthews?

16 A. No.

17 Q. Do you have an estimate of time, a particular  
18 amount of time that the particular officers sued by  
19 Nathan Burns spent with Nathan Burns?

20 MR. LATTIMER: Objection as to relevance and  
21 materiality.

22 THE WITNESS: No.

23 BY MR. HUGHES:

24 Q. Do you have an opinion as to the length of  
25 time that the officers involved in the arrest of Bowers,

1 Bowers and Kerry White spent with Bowers, Bowers and  
2 Kerry White?

3 MR. LATTIMER: Objection as to relevance and  
4 materiality.

5 THE WITNESS: No.

6 BY MR. HUGHES:

7 Q. You understand that these were officers who  
8 were on skirmish lines and had to go back to their  
9 skirmish lines?

10 A. I understand that these were officers that  
11 were involved in the skirmish lines and was part of  
12 Arrest Teams who determined and decided to go back to  
13 the skirmish lines.

14 Q. I mean, you're not aware that they had, you  
15 know, command officers nearby that had these detectives  
16 back on the skirmish lines right away?

17 A. I'm not aware of the -- any command officers  
18 that were given direction.

19 What I am aware of is that the officers made  
20 arrests and they turned the arrested parties over to  
21 another police officer, who subsequently turned them  
22 over to a transport officer in just about all of these  
23 cases, and -- let me finish.

24 Q. Okay.

25 A. And they decided that they were going back to



1 the skirmish line instead of completing a police report  
2 at the time.

3 That's a decision that -- that was made,  
4 and -- and that's what happened.

5 I also know that these police officers were  
6 on 12-hour shifts.

7 It was reported that they were working  
8 12-hour shifts.

9 At some point they were relieved from their  
10 duty and had time at that point to document their  
11 activities and their arrests.

12 Q. Going back to decontamination, in your report  
13 you do not explain which Plaintiffs, if any, you are  
14 talking about that should have been decontaminated.

15 Are you specifying any of the particular  
16 Plaintiffs in this case?

17 A. No. I would -- I would just say that they  
18 failed to establish those procedures, and any one of the  
19 Plaintiffs who was subject to chemical agents should  
20 have had the opportunity to be decontaminated.

21 Q. Can you tell me which Plaintiffs were  
22 subjected to anything that needed to be decontaminated?

23 A. The Plaintiffs that were subject to CS gas  
24 and those that were subject to OC spray.

25 At this stage of the day, I don't recall what

1 Plaintiffs in particular were complaining that they were  
2 subject to chemical agents.

3 Whoever those Plaintiffs were, if any, they  
4 should have been decontaminated and treated.

5 Q. You were talking before about -- saying that  
6 there's a dispute with regarding to facts in this case.

7 Are you saying that whenever a police report  
8 is prepared within a day or so of the arrest, that then  
9 there is no dispute regarding the facts of the arrest  
10 between the police and the arrestees?

11 A. No. What I am saying is that when a police  
12 report is completed contemporaneously with an arrest,  
13 the likelihood of the police report to be complete or --  
14 or the memory of the officer to recall what took place  
15 is better than eight months later when his memory has to  
16 be refreshed by an investigator.

17 And when you do something that's eight months  
18 later through an investigator who had to refresh the  
19 officer's memory, the credibility of the officer's  
20 account comes into question as opposed to if he  
21 completed his police report contemporaneously when other  
22 officers who were there completed supplemental reports,  
23 then you have more support and credibility for your  
24 position.

25 When you don't do it or you have somebody

1 else do it eight months later, it raises questions as to  
2 the accuracy, thoroughness of those reports, and that's  
3 where I say that there is a dispute as to facts.

4 And again, that's not for me to determine  
5 what facts are correct. That's a decision for the  
6 jury.

7 Q. It's a decision for the jury, but you would  
8 agree that if the police reports are accurate, then in  
9 each instance involving each Plaintiff there was  
10 arguable probable cause to arrest?

11 MR. LATTIMER: Objection. He's answered the  
12 question with respect to every Plaintiff both by  
13 you and Mr. Plunkert all day.

14 BY MR. HUGHES:

15 Q. Would you like to -- you were interrupted.  
16 He's trying to tell you what to say, but --

17 A. I don't know that he's trying to tell me what  
18 to say. You're going to have to ask it again or have it  
19 read back.

20 Q. Okay.

21 (Thereupon, the requested question was read  
22 back.)

23 THE WITNESS: No, I would not because there  
24 were some cases where with the example of Kerry  
25 White and the Bowers, there was only three of them

1 in the vehicle, and I don't know how they would be  
2 considered with a group of six or more when they  
3 were in a vehicle.

4 So I would question whether that's -- whether  
5 there was probable cause to make the arrest for  
6 failure to disperse.

7 BY MR. HUGHES:

8 Q. Well, the question wasn't if the police  
9 reports are accurate if there's probable cause to arrest  
10 for failure to disperse.

11 The question was if the police reports are  
12 accurate in each instance involving each Plaintiff,  
13 there is arguable probable cause to arrest for  
14 something?

15 MR. LATTIMER: Objection, asked and  
16 answered.

17 THE WITNESS: I'm going to say no, because if  
18 the police report regarding Kerry White and the  
19 Bowers, if it's accurate, and what the police  
20 report says is that there's three of them in the  
21 car and they were charged with failure to disperse  
22 but there was only three of them when it's my  
23 understanding that there needed to be six of them  
24 or more, I would not agree that there's probable  
25 cause to arrest them.

1 BY MR. HUGHES:

2 Q. So whether or not there's probable cause to  
3 arrest or not is not dependent upon when the police  
4 report is prepared?

5 A. Yes. We -- we went through that earlier. I  
6 agree with you.

7 Q. And whether or not excessive force was used  
8 or not is not dependent upon when the police report is  
9 prepared?

10 A. Correct.

11 Q. All right. You had one decision, Mustafa  
12 Abdullah, which had something to do with the free speech  
13 zone on August 19th, is that correct, Keep Moving?

14 A. Yes.

15 Q. Okay.

16 A. The Five Second Rule.

17 Q. The Five Second Rule.

18 Obviously it has nothing to do with these  
19 particular Plaintiffs since there wasn't any Five Second  
20 Rule involving them, Keep Moving rule, but did  
21 Mr. Lattimer explain why he sent that to you?

22 A. No.

23 Q. You referred to one of those reports saying  
24 there wasn't tracking of force.

25 Were you actually saying there wasn't

1 tracking of use of less lethal force?

2 Isn't that what the report was talking  
3 about?

4 A. It may have been talking about less lethal  
5 force, but if -- if the Department of Justice is  
6 critical that the agency did not track less lethal  
7 force, I'm going to go out on a limb and say you know  
8 what, they also didn't track other forces that were  
9 used, such as taking people to the ground.

10 That should have been tracked and documented,  
11 as well, because that's the standard.

12 Even though the Department of Justice may not  
13 have mentioned that, it does not mean you shouldn't  
14 track -- you should only track less lethal force.

15 You should track all force that's being  
16 used. That's the standard of care. That's the  
17 widely accepted police practice in -- in the United  
18 States --

19 Q. Okay.

20 A. -- regarding force.

21 Q. So you understand that when you talk about  
22 standards of care, what you call standards of care and  
23 when you talk about practices of police, that doesn't  
24 necessarily coincide with a constitutional violation; is  
25 that correct?

1 A. That's correct.

2 MR. HUGHES: All right. Okay. I guess  
3 that's all.

4 Do you have any other questions, Bob?

5 MR. PLUNKERT: I think Greg might.

6 MR. HUGHES: Hmm?

7 MR. PLUNKERT: I think Greg might.

8 CROSS-EXAMINATION

9 BY MR. LATTIMER:

10 Q. Just a couple things.

11 I wanted to clarify something Mr. Plunkert  
12 asked you about reporting.

13 He asked you about were you aware of any  
14 reports of any of the arrests in the City of Ferguson;  
15 do you remember that?

16 A. I'll accept that, but go ahead.

17 Q. Okay.

18 MR. HUGHES: Excuse me. While you're asking  
19 him, could you find Exhibit R? Can I see that, the  
20 correspondence with Mr. Lattimer?

21 MR. LATTIMER: So you want me to stop and  
22 wait for him to find that?

23 THE WITNESS: What do you want me to do,  
24 guys?

25 MR. HUGHES: Well, I just thought you

1           could --

2           MR. LATTIMER: Well, he can't answer my  
3           questions and find it.

4           THE WITNESS: (indicating).

5           MR. HUGHES: Thank you.

6           MR. LATTIMER: So do you want me to wait or  
7           what?

8           MR. HUGHES: If you thought I rudely  
9           interrupted you --

10          MR. LATTIMER: You did. You did. You know  
11          you rudely did.

12          MR. HUGHES: -- I apologize.

13          MR. LATTIMER: But anyway, can I continue or  
14          do you want me to wait?

15          MR. HUGHES: Yes. Yes, you may.

16          MR. LATTIMER: All right.

17   BY MR. LATTIMER:

18           Q.     What I was asking you was about a question  
19           that Mr. Plunkert asked about reporting of any of the  
20           arrests to the City of Ferguson.

21                   Are you with me so far?

22           A.     Yes.

23           Q.     All right. Now, in this case when the  
24           arrests were made, did you determine where the people  
25           were taken, the Plaintiffs?



1           A.     When I looked at the investigative report, it  
2     seems to indicate that they were taken to Central County  
3     Precinct -- no. I'm sorry. I'm going to -- they were  
4     taken to the County Jail.

5           Q.     All right. So is it your general  
6     understanding they were taken to County Jail or Ferguson  
7     County Jail, as well?

8           A.     I don't recall. I'd have to look at each  
9     individual one to see what the report says.

10          Q.     Let's assume for purposes of this question,  
11     because I don't want to have you dig through all this  
12     stuff, that some were taken to St. Louis County and some  
13     were taken to City of Ferguson. Okay?

14          A.     Okay.

15          Q.     And when they were taken to those particular  
16     jails, when they were taken to these particular  
17     facilities, nothing was included that would indicate  
18     the basis for the charges against them, nothing in  
19     writing.

20          A.     Correct.

21          Q.     Okay? I want you to assume that. All right?

22          A.     Yes.

23          Q.     Both with respect to St. Louis County and  
24     City of Ferguson, correct?

25          A.     Yes.

1 Q. Now, in your opinion what should have  
2 occurred at that point?

3 MR. PLUNKERT: I'll object as to form.

4 THE WITNESS: In my experience county jails  
5 should not accept prisoners without the  
6 presentation of probable cause.

7 BY MR. LATTIMER:

8 Q. And when you take people into custody without  
9 a determination of probable cause, is that consistent or  
10 inconsistent with national standards?

11 A. It's inconsistent with the American  
12 Correction Association's standard that probable cause  
13 should be presented at the time a prisoner is turned  
14 over to correction personnel.

15 Q. All right. Now, are you aware in this case  
16 of any documentation being prepared with regard to  
17 probable cause for any of the Plaintiffs?

18 A. No, other than by Detective Menzenwerth.

19 Q. Let me clarify.

20 Are you aware of any contemporaneous  
21 documents being prepared?

22 A. No.

23 Q. Are you aware of any of the Plaintiffs being  
24 taken before a Magistrate and sworn testimony presented  
25 with respect to a probable cause determination?

1 A. No.

2 Q. And were you aware of anything at all that  
3 was prepared by any Police Department with respect to  
4 these individuals being taken to a jail or a detention  
5 facility and documents were provided indicating that  
6 probable cause existed for their arrest?

7 A. No.

8 Q. And then you were asked -- this is the last  
9 little thing -- you were asked by Mr. --

10 MR. PLUNKERT: Plunkert? Hughes?

11 BY MR. LATTIMER:

12 Q. No, Hughes, about the timing of the reports  
13 in that when you prepare a report, it does not indicate  
14 whether or not probable cause existed.

15 Do you recall that?

16 A. Yes.

17 Q. What is the significance of the preparation  
18 of contemporaneous reports?

19 A. There's a lot of significance because it  
20 allows the people who have been arrested to understand  
21 what they have been arrested for and what the police  
22 department -- what the police officers are saying to  
23 help them prepare a defense against those charges.

24 It allows prosecutors to be able to bring  
25 forward appropriate charges for those that have been

1 arrested.

2 It also allows for accountability and  
3 transparency that this is not -- we don't function in a  
4 police state, that police officers are required to  
5 justify the actions that they take, and they do that  
6 through police reports.

7 Q. Okay.

8 A. So there's a lot of implications as to why  
9 you want to do a police report.

10 And the other issue is you want to do it  
11 contemporaneously because that's when it's fresh in your  
12 mind.

13 That's when the incidents have happened in  
14 the recent past, and you can recall what happened with  
15 clarity, with detail and put that information into the  
16 report.

17 What happens with memory and what happens  
18 when you're doing something eight months later, you --  
19 your memory fades. It deteriorates.

20 Sometimes you're filling in the gaps with  
21 what you think happened.

22 Sometimes your memory is contaminated from  
23 talking to others or as in the case with Menzenwerth,  
24 you're being -- your memory's being refreshed -- well,  
25 it may not be your memory that's being refreshed.

1           It's the information that he's giving you  
2           that causes you to think this is what happened when, in  
3           fact, it may not.

4           So in police -- in the police profession  
5           people -- police officers are taught from day one if you  
6           don't document things, it didn't happen.

7           You have to document everything that you do.

8           It's a standard that I learned in 1974 in the  
9           Police Academy and it has not changed and it's still  
10          current today.

11          Q.     Now, the last thing on Page 17 of your  
12          report -- do you have that in front of you?

13          A.     I don't know where it is.

14          MR. HUGHES: I have an extra copy I think.

15          THE WITNESS: 17?

16          BY MR. LATTIMER:

17          Q.     17.

18          A.     This one doesn't have 17.

19          Q.     How about taking mine.

20          MR. HUGHES: Sorry about that.

21          BY MR. LATTIMER:

22          Q.     And I'm going to draw your attention to the  
23          part that talks about conclusion.

24          Do you see that?

25          A.     Yes.

1 Q. And you talk about an environment that was  
2 allowed to exist --

3 A. Yes.

4 Q. -- in Ferguson.

5 Do you see that?

6 A. Yes.

7 Q. Now, when you talk about environment, explain  
8 exactly what it is you're talking about.

9 A. I'm talking about the activities of the  
10 police officers that were involved in this response to a  
11 civil disturbance and the civil disturbance itself, but  
12 what I'm saying is that because of Chief Belmar's  
13 position, that there was joint command, that he and  
14 Jackson, City of Ferguson, St. Louis County, allowed  
15 this environment to exist where police officers were  
16 just not held accountable, were not required to provide  
17 probable cause for arrest, not required to document the  
18 use of force, and that -- allowing that to exist is just  
19 inconsistent with police practices because they should  
20 have demanded, and Chief Belmar talks about that, that  
21 it was his understanding, it was his expectation that  
22 these arrests were documented, that these uses of force  
23 were documented and that was his expectation.

24 So he takes the position that's what we  
25 should have done, that's what he thinks they did, but in

1 reality, they didn't do it contemporaneously with the  
2 incidents themselves.

3 Q. All right. And what other foreseeable  
4 consequences of the failure to take such actions --  
5 failure to make sure that that environment does not  
6 exist?

7 MR. PLUNKERT: That calls for speculation.  
8 He may answer.

9 THE WITNESS: You're going to violate  
10 people's civil rights by using force that you're  
11 not going to report that may be unreasonable,  
12 objectively unreasonable force, that you may be  
13 detaining people without -- without probable cause  
14 because you need to have somebody that provides  
15 some oversight to what the police officers are  
16 doing, and you do that through supervision.

17 That's standard in law enforcement, because  
18 if you don't, as I said, you could have people  
19 arrested where probable cause did not exist.

20 You could have use of force applied that's  
21 objectively unreasonable and not even report it,  
22 and that's unreasonable.

23 BY MR. LATTIMER:

24 Q. And would it be fair to say that because we  
25 give police officers extraordinary power, we have to

1 hold them accountable for the actions that they take?

2 MR. PLUNKERT: Object to the form. You can  
3 answer.

4 THE WITNESS: Absolutely, and that's why  
5 police departments require reporting.

6 That's why -- that's why they require  
7 reporting of use of force.

8 And let me -- and now that you're mentioning  
9 this --

10 MR. PLUNKERT: Move to strike as narrative  
11 and non-responsive.

12 BY MR. LATTIMER:

13 Q. You can answer. You can go ahead.

14 A. Even Menzenwerth says that he was directed  
15 to -- to complete these reports not for any purpose  
16 other than to comply with Uniform Crime Reports, and he  
17 says that he was directed by somebody in command level.

18 And that is absolutely not the reason why you  
19 want to document use of force in arrests.

20 It's part of it. You have to document  
21 arrests for the Uniform Crime Report, but that cannot be  
22 your -- your -- your sole focus or reason for having  
23 Menzenwerth go back and try to re-create these reports.

24 Not for Uniform Crime Reports. It's for  
25 doing the right thing, documenting arrests and



1 documenting use of force.

2 Q. And when an environment -- would it be  
3 correct to say that when an environment of  
4 unaccountability exists, that that is an environment  
5 that is ripe for violations of the constitutional rights  
6 of the citizen?

7 MR. PLUNKERT: Object to the form as leading.

8 You can answer.

9 MR. HUGHES: I join.

10 THE WITNESS: Yes.

11 MR. LATTIMER: Thank you. That's it.

12 RECROSS-EXAMINATION

13 BY MR. PLUNKERT:

14 Q. To touch on these questions that you just  
15 answered -- I'm not going into anything else -- did  
16 Theophilus Green or Damon Coleman, were they kept more  
17 than 48 hours in the St. Louis County Jail?

18 A. I don't believe so.

19 Q. You agree that failure to provide  
20 documentation contemporaneously with an arrest to the  
21 person that's intake at jail doesn't violate any  
22 constitutional provision, does it?

23 A. No.

24 Q. Okay.

25 A. But it would violate a standard of the

1 American Correction Association, which would -- which  
2 says before you accept a prisoner, you have to make sure  
3 that there's probable cause to accept them.

4 And in this case there was no probable cause  
5 that -- or probable cause that was documented.

6 Q. Sure, and I understand your national standard  
7 part, and I'm separating that from a constitutional  
8 amendment that bars against it.

9 There's no constitutional amendment that is  
10 violated by failing to provide a contemporaneous  
11 documentation at an arrest, correct?

12 A. That's correct.

13 Q. And the three Maryland Heights officers, do  
14 you know whether they knew the report wouldn't be  
15 written for eight months when they made the arrest and  
16 conveyed them?

17 A. No.

18 Q. They didn't have reason to know it would take  
19 that long, did they?

20 A. No.

21 Q. Was anyone at the City of Ferguson tasked  
22 with the assignment to write any reports about any of  
23 these arrests?

24 A. I don't know.

25 Q. Do you believe that the Municipality of

1 Ferguson influenced St. Louis County's policies and  
2 procedures and the environment?

3 Did I understand that right?

4 A. No. What the report says is that they  
5 allowed an environment to exist where you didn't have to  
6 document arrests, where you didn't have to document use  
7 of force.

8 Q. In Ferguson which report are you talking  
9 about, the DOJ?

10 A. My report.

11 Q. Oh, okay. Okay. So when you say "they", are  
12 you talking about the City of Ferguson, St. Louis County  
13 or what?

14 A. Yes. Ferguson, St. Louis County, Chief  
15 Jackson and Chief Belmar, because it's my understanding  
16 from Belmar's deposition that there was joint command.

17 Q. Do you think that Menzenwerth was influenced  
18 at all by any environment that may or may not have been  
19 created by the City of Ferguson?

20 A. I don't know.

21 MR. PLUNKERT: That's all I have. Mike, what  
22 do you think?

23 FURTHER DIRECT EXAMINATION

24 BY MR. HUGHES:

25 Q. This was marked, I think, as Exhibit R. It

1 hasn't been marked. This is the correspondence.

2 A. Wait a minute.

3 MR. LATTIMER: It was in a manila folder --

4 MR. PLUNKERT: It was in a folder.

5 MR. LATTIMER: -- that has a sticker on it.

6 MR. PLUNKERT: Right here.

7 MR. HUGHES: Oh, right. Okay.

8 BY MR. HUGHES:

9 Q. Okay. Defendant's Exhibit R has your  
10 Consultant Expert Fee Retainer Agreement.

11 It has your list of cases. It has your  
12 Curriculum Vitae and then it has E-mails that were  
13 exchanged.

14 It seems like it's mostly E-mails that were  
15 sent to you by Mr. Lattimer and one or two E-mails sent  
16 by you to him; is that correct?

17 A. There's a few from Mr. Lattimer I think.

18 Q. It's almost all from Mr. Lattimer, isn't it?

19 A. No.

20 Q. Okay.

21 A. They're also from --

22 Q. Or Mr. Lattimer's office?

23 A. Yes.

24 Q. Okay.

25 A. These are all from Mr. Lattimer's office.

1 Q. And sandwiched in between two E-mails are two  
2 paragraphs, so I want to know -- it's one page with two  
3 paragraphs and it looks like it was sent near or about  
4 the time -- it looks like it could have been sent  
5 December 9th or perhaps December 13th.

6 It's sandwiched in between E-mails December  
7 9th and December 19th.

8 It's one page with two paragraphs.

9 MR. LATTIMER: It couldn't have been December  
10 19th.

11 BY MR. HUGHES:

12 Q. December 13th.

13 A. Yes.

14 Q. Do you see that?

15 A. Yes.

16 Q. Okay. And is that something Mr. Lattimer  
17 prepared or is that something you prepared?

18 A. It's something that Mr. Lattimer and I  
19 discussed, and Mr. Lattimer and I was trying to take  
20 notes as we were discussing it, and he offered to, "How  
21 about I just send you the language that I'm -- that  
22 we're talking about?" and I said, "Send it to me," and  
23 he did.

24 Q. So Mr. Lattimer sent you some language?

25 A. Yes.

1 Q. Two paragraphs.

2 Could you read that for the record, what  
3 Mr. Lattimer sent to you?

4 Well, first of all, before you do, can you  
5 tell me when it was that Mr. Lattimer sent this to you?

6 A. I think it was either the 13th or the 12th or  
7 13th of December.

8 Q. Okay.

9 A. Somewhere in that --

10 Q. And this was just prior to your final report;  
11 is that correct?

12 A. Yes.

13 Q. Could you read to us what was typed up by  
14 Mr. Lattimer's office and sent to you?

15 A. "In sum, the City of Ferguson, St. Louis  
16 County, Chief Jackson and Chief Belmar," parentheses,  
17 "the Municipal Defendants allowed an environment to  
18 exist in Ferguson, Missouri following the death of  
19 Michael Brown, in particular the period of August 10th  
20 through the 13th, 2014 where law enforcement officers  
21 were not held accountable, were not required to provide  
22 probable cause for arrest and were not required to  
23 document uses of force. Allowing this environment to  
24 exist was inconsistent with all applicable standards of  
25 care and was in several respects unprecedented in modern

1 day law enforcement practices. In allowing the  
2 environment to -- discussed herein to exist, it was  
3 entirely foreseeable that the constitutional rights  
4 would be violated, arrests without probable cause would  
5 be made and that force without reason would be used.  
6 The Department of Justice After-Action Report detailed  
7 the situation that amounted to a complete failure of law  
8 enforcement to properly respond to its citizenry  
9 following the shooting death of Michael Brown. The  
10 records reviewed herein fully documents specific  
11 failures on the part of law enforcement amounting to  
12 policies and practices on the part of the Defendants  
13 that exhibited a reckless disregard and deliberate  
14 indifference for the rights of citizens as a proximate  
15 cause of the injuries suffered by the Plaintiffs in this  
16 case."

17 Q. Okay. Thank you.

18 And you indicated earlier that somewhere in  
19 all these things is an earlier draft; is that correct?

20 A. Yes.

21 Q. And that's been marked separately as an  
22 exhibit?

23 A. Or it could be in this folder, but it's there  
24 somewhere.

25 Q. All right.

1 A. Yes.

2 Q. And then during the course of your earlier  
3 draft and your final draft you had discussions with  
4 Mr. Lattimer; is that correct?

5 A. Yes.

6 Q. All right. Do you think you could find the  
7 earlier draft just to make sure we have that?

8 A. It's right here.

9 Q. That's in a folder Exhibit S, as in Sam, and  
10 it's dated December 11th, 2015.

11 So when you prepared this earlier draft  
12 December 11th, 2015, did you send it to Mr. Lattimer to  
13 review?

14 A. I did.

15 Q. And then he reviewed it and he gave you some  
16 suggestions and then he also sent you two paragraphs  
17 that were typed by somebody?

18 A. No. What happened was I sent this draft to  
19 Mr. Lattimer.

20 I called him and asked him if he had a chance  
21 to review it. He said he did.

22 There was some typos that were in the report  
23 that he pointed out to me, and then we also discussed  
24 the conclusion or the ending summary of the report, and  
25 he pointed out to me that I failed to summarize the



1 report. It appeared that I failed to summarize the  
2 report.

3 I looked at the report.

4 I says, "You're right."

5 I just kind of dropped off the edge.

6 So we discussed about how to tie the report  
7 in together, come up with a summary.

8 We had discussions about the things that I  
9 included in those last two paragraphs and we were over  
10 the phone and I was having -- trying to make notes at  
11 the same time to make sure that I was keeping track of  
12 our discussion and the things that we talked about and  
13 agreed upon.

14 And I said, "Help me out. Just send me the  
15 language and I'll take a look at it," instead of me  
16 trying to put it together through some notes.

17 That's all it was. So the only changes were  
18 some typos that were made and adding a summary that we  
19 both discussed in detail, we both agreed upon and I  
20 included.

21 Q. So once he had reviewed it, you both agreed  
22 upon it and then he came up with your final draft?

23 A. No. You're still not hearing what I said.

24 Q. No, I did.

25 MR. LATTIMER: No, you didn't.

1 BY MR. HUGHES:

2 Q. You had a first draft and then you had a  
3 final draft?

4 A. Okay.

5 Q. And you discussed it in between; is that  
6 correct?

7 A. We discussed the need to have a conclusion or  
8 a summary at the end of the report, and we discussed  
9 what should be in that summary to tie it all together,  
10 and we agreed upon the language of how to do that.

11 And as I said, I'm in a hotel at the time,  
12 I'm trying to take notes so I can add those finishing  
13 paragraphs, and I asked for his assistance.

14 "Listen, just send me what we just talked  
15 about and I'll take a look at it and I'll include it in  
16 the report."

17 So your inference that he sent it at his own  
18 volition or his own -- or he decided to send it, no, we  
19 discussed it.

20 We discussed the language. We discussed the  
21 issues that needed to be in the report and I added it.

22 Q. And Robert R. Pusins & Associates,  
23 Incorporated, is that an LLC corporation or --

24 A. No, it's an S Corporation.

25 Q. And are there any other employees besides

1 you?

2 A. Periodically there are.

3 Q. Anyone to check on typos or --

4 A. No.

5 Q. Have you ever gone to Ferguson to look at the  
6 area where this occurred?

7 A. No.

8 Q. Have you ever spoken to any of the  
9 Plaintiffs?

10 A. No.

11 Q. Okay.

12 A. I think you left out some of the other items  
13 there.

14 Q. These are in Exhibit R, which you have.

15 A. Which one is R?

16 Q. Correspondence.

17 A. Correspondence.

18 Q. That you just read for the record.

19 A. Okay. I'm sorry.

20 MR. HUGHES: All right. I guess that's all I  
21 have.

22 THE COURT REPORTER: Read or waive?

23 THE WITNESS: Do we want to read or waive?

24 MR. LATTIMER: We'll read. How about that?

25 THE WITNESS: We'll read.

1 MR. PLUNKERT: Mike or Greg, if you guys  
2 don't have any dispute with this, why don't we  
3 leave the exhibits in the possession of Mr. Pusins.

4 And, Mr. Pusins, would you agree not to  
5 destroy or change any of these exhibits?

6 THE WITNESS: I was hoping not to have to  
7 carry these home. I was hoping just to give them  
8 to you.

9 Yes, I will retain them. I will not destroy  
10 them or alter them in any fashion.

11 MR. PLUNKERT: We'll contact you at a later  
12 point in time if we want to request any or all of  
13 the exhibits, and we can have the document copying  
14 service come by and scan it. Is that all right  
15 with you?

16 THE WITNESS: Yes.

17 MR. HUGHES: Well, what I'd like to do before  
18 I leave is do you have a copy machine here I  
19 assume?

20 THE COURT REPORTER: Yes.

21 MR. HUGHES: Why don't we make, yeah,  
22 Exhibits A, B, L and K part of the record just  
23 attached to the deposition.

24 MR. PLUNKERT: Do you want to have her just  
25 scan it later?

1 MR. HUGHES: You know, which is a Consultant  
2 Fee Retainer Agreement, the Profit and Loss and  
3 then the advertising. Okay?

4 And then as far as the E-mails, Exhibit R,  
5 you know, the correspondence, I'd like to have that  
6 copied right now, if I could. Thank you.

7 I will order the transcript.

8 THE COURT REPORTER: Would you like a copy of  
9 the transcript?

10 MR. PLUNKERT: Yes, I'll take a copy.

11 MR. LATTIMER: Yes, I need a copy of the  
12 transcript. I'll take it. Thank you.

13 (Thereupon, the deposition was concluded at  
14 4:45 p.m.)

15 (Reading and formalities were not waived.)

16 - - -

17  
18 -----  
19 THE WITNESS  
20  
21  
22  
23  
24  
25

1  
2 STATE OF FLORIDA )

3 COUNTY OF BROWARD )  
4

5 I, the undersigned authority, certify that ROBERT  
6 R. PUSINS, personally appeared before me and was duly  
7 sworn.  
8

9  
10 WITNESS my hand and official seal this 15th day of  
11 January, 2016.  
12

13 -----  
14 JENNIFER A. POLEO, CSR  
15 Notary Public - Expires February 21, 2019  
16 Commission No. FF188226  
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STATE OF FLORIDA )

COUNTY OF BROWARD )

I, JENNIFER A. POLEO, CSR, certify that I was authorized to and did stenographically report the deposition of ROBERT R. PUSINS, that a review of the transcript was requested; and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 15th day of January, 2016.

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JENNIFER A. POLEO, CSR

Prestige Reporting Service, Inc.  
633 South Andrews Avenue  
Suite 202  
Fort Lauderdale, FL, 33301  
(954) 764-7297

January 15, 2016

RE: White, et al v. Jackson, et al

Dear Mr. Pusins:

Your deposition was taken in the above-styled case on January 7, 2016. At the time of your deposition you exercised your right to read. Please return the enclosed errata sheet signed and notarized to our office within 30 days. If you wish to waive the reading and signing of the deposition, please so advise.

If this deposition has not been signed by February 15th, 2016, or the signature thereto waived, we will forward the original to the attorney ordering same. Should you have any questions, please feel free to contact our office.

Sincerely,

Jennifer Poleo, CSR.

cc: Michael E. Hughes, Esquire.

cc: Robert T. Plunkert, Esquire.

cc: Gregory L. Lattimer, Esquire.



ERRATA SHEET

NAME: \_\_\_\_\_

RE: \_\_\_\_\_

The following corrections, additions or deletions  
were noted on the transcript of the testimony which I  
gave in the above captioned matter, held on:

<u>PAGE(S)</u>	<u>LINE(S)</u>	<u>SHOULD READ</u>
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Signature: \_\_\_\_\_

Date: \_\_\_\_\_